

WATER PERMIT NO. 2833-2

Name of Applicant: **Brian Burnham**

Address: **31166 300th St, Winner SD 57580**

Phone: **605 208-0383**

Amount of Water Claimed: **1.85 cfs**

Total Acres: **130 acres**

Source of Water Supply: **groundwater (4 wells)**

Water to be used for: **irrigation**

County: **Tripp**

Type of Waste Disposal System:

Location: **24 miles southwest of Winner**

PRIORITY

Date Received: **12-28-21**

Application/License Fee: **\$ 1,250**

Corrected Application Received:

Period of Annual Use: **April 1 – October 31**

Remarks:

Diversion Point: **SE 1/4 Section 16; all in T95N-R77W**

Land to be Irrigated: **SE 1/4 Sec 16-T95N-R77W**

Depth of Well: **100 feet**

Well Driller:

Remarks:

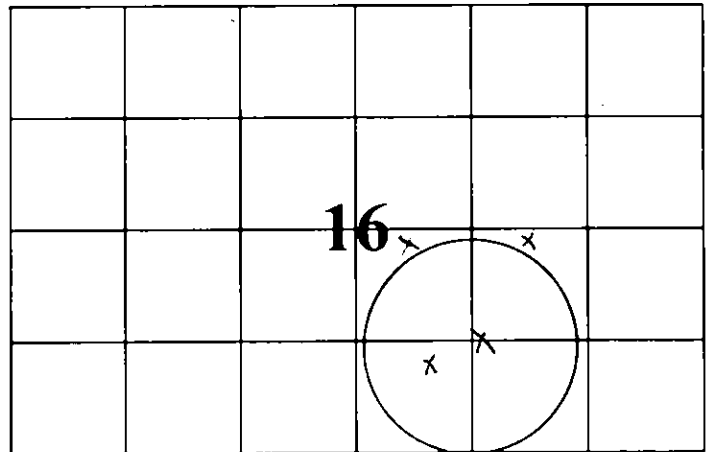
Type of Map: **aerial**

Prepared by:

Reviewed and the Number Assigned on: **1-4-22**

By: **Karen Schlaak**

Notice of Hearing - date to intervene: _____



**SOUTH DAKOTA
WATER PERMIT NO. 2833-2**

Date of first receipt of application December 28, 2021.

The Water Management Board approved Water Permit No. 2833-2 on October 5, 2022 for Brian Burnham, 31166 300th St, Winner SD 57580 authorizing the construction of the water use system and the placing of water to beneficial use subject to the following limitations, conditions and qualifications:

1. Water Permit No. 2833-2 appropriates 1.85 cubic feet of water per second from up to 9 wells to be completed into the Quaternary Eolian Aquifer (approximately 75 feet deep) located in the W 1/2 section 15; and NE 1/4 SE 1/4 section 16; all for irrigation of 130 acres in the SE 1/4 Section 16; all in T95N-R77W. Two of the 9 wells are existing wells covered by Water Right No. 1260-2 for irrigation of the SW1/4 section 15-T95N-R77W. This permit authorizes the 2 existing wells and the 7 proposed wells be used to irrigate all the acreage in the SE1/4 Section 16 and SW1/4 section 15; all in T95N-R77W. The pivots will be operated on an alternating basis. This site is located approximately 24 miles southwest of Winner SD.
2. The amount of the appropriation may not exceed 2 acre feet annually for each acre of land to which water is actually and beneficially applied for irrigation. The water is to be used during the following described annual period: April 1 – October 31.
3. The date from which applicant may claim right is December 28, 2021.
4. One-fifth of the construction is to be completed on or before April 5, 2025.
5. All construction is to be completed on or before October 5, 2027.
6. Water is to be put to beneficial use on or before October 5, 2031.
7. Water rights obtained in compliance with the laws of the State of South Dakota may not be unlawfully impaired by this appropriation.

QUALIFICATIONS

1. The wells approved under Water Permit No. 2833-2 are located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 2833-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.
4. Water Permit No. 2833-2 and Water Right No. 1260-2 may not be exercised simultaneously, and the maximum combined diversion rate authorized by Permit No. 2833-2 and Water Right No. 1260-2 may not exceed 1.85 cubic feet of water per second.

WATER MANAGEMENT BOARD

By: Eric Gronlund
Eric Gronlund, Chief Engineer
Water Rights Program
Department of Environment and Natural Resources

OCT 07 2022

date



FORM 2: Application for irrigation in South Dakota

(type or print)

Mail to: DENR - Water Rights 523 E Capitol Ave Pierre, SD 57501-3182 ph. (605) 773-3352	No. <u>2833-2</u> (office use only) Hydrologic Unit <u>10150006</u>
	Basin <u>Niobrara Trib</u>
	Newspaper <u>Winner Advocate</u>
	<u>Plainsman</u>

PAID
DEC 28 2021
Ck# 13474

Application For Permit To Appropriate Water For Irrigation

Type of Application: ☒ New ☐ Vested Right ☐ Amendment/Correction to Permit No. _____
 (Use predates Mar 2, 1955)

Description of amendment/correction: (i.e. change diversion point(s), add diversion point(s), change use, etc.)

1. Name to Appear on Irrigation Permit Brian Burnham

Note: The "Name to Appear on Irrigation Permit" must be the name in which the property to be irrigated is held in.

Mailing Address 31166 300th St. Winner SD 57580
 (Address) (City) (State) (Zip Code)

Phone _____ Mobile 605 208-0383 Email _____

2. Amount of water claimed 1.85 *CFS or 835 **GPM ***AF Total Acreage 130
 (*Cubic Feet per Second) (**Gallons per Minute) (***)Acre Feet - storage capacity of dam/dugout or annual use if applicable)

3. Source of water supply 4 wells up to 9 wells (2 existing wells - 1260-2)

4. Location of point of diversion Southeast Quarter NE 1/4 Sec 16 in township
 (example - 3 wells in SW1/4 NE1/4 section 12-T104N-R53W)

95 North, Range 77W County _____

5. County or counties where water will be used Tripp

6. Annual period during which water is to be used April - OCTOBER

7. List below each forty acre division, or lot, or fraction thereof and show number of acres to be irrigated in each.
 (Attach sheet if more space is needed)

Land Description	Acres	Land Description	Acres
NW 40 Acres	32.5		
NE 40 Acres	32.5		
SW 40 Acres	32.5		
SE 40 Acres	32.5		

8. Give a description of the project. (Attach sheet if more space is needed)

See file documentation dated March 4th 16, 2022.

I, Brian Burnham Owner, the applicant, certify under
 Name of Person Title (if applicable)

penalty of perjury that I have read this application, examined the attached map, and that the matters stated are true. I further certify, if acting on behalf of an entity or individual other than myself, that I am authorized to submit this application.

Supplemental Information

(type or print)

1. Well Information

(check one or both as applicable) ☒ Drilling new well(s) ☐ Using existing well(s)

a) If new wells, how many 4⁷ Have test holes been drilled ☒ Yes ☐ No Drilled by Becks well & Irrigation
(if yes, please provide copies of logs)

b) If existing wells, how many 2² Provide copy of log(s), if available. Drilled by _____

For either Existing or Proposed Wells:

c) Well Depth (required) 100' Depth to Top of Water Bearing Material 20' Depth to Water from Surface 20'

d) Distance to nearest domestic well on applicant's property 3/4 mile Property owned by others _____

2. Wastewater Disposal System Information

a) Type of System (i.e. septic tank, drain field) _____

b) System Capacity (gallons) _____ Year Constructed _____

c) Connected to the City of _____ Sanitary System

3. Dugout Information

a) Surface Dimensions _____ Depth _____

b) Depth to water (ground surface to water level) _____

4. Water Storage Dams

If the proposed water use system contains one or more storage dams, please furnish the information requested below for each dam. The locations of the dams need to be shown on the map submitted with the application.

a) If a private engineering firm or government agency was involved in the design of this dam, please give their name and address:

b) Freeboard _____

c) Crest Width _____

Crest Length _____

d) Height _____

e) Primary Outlet Capacity _____

If pipe, diameter _____

f) Secondary Spillway Capacity _____

Spillway Width _____

g) X & Y Slope (e.g. 3 to 1 is a typical slope)

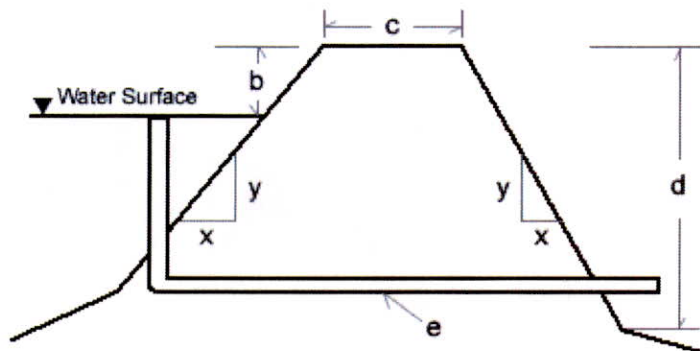
Upstream _____

Downstream _____

h) Surface Area of Impoundment _____

i) Storage _____ Acre Feet

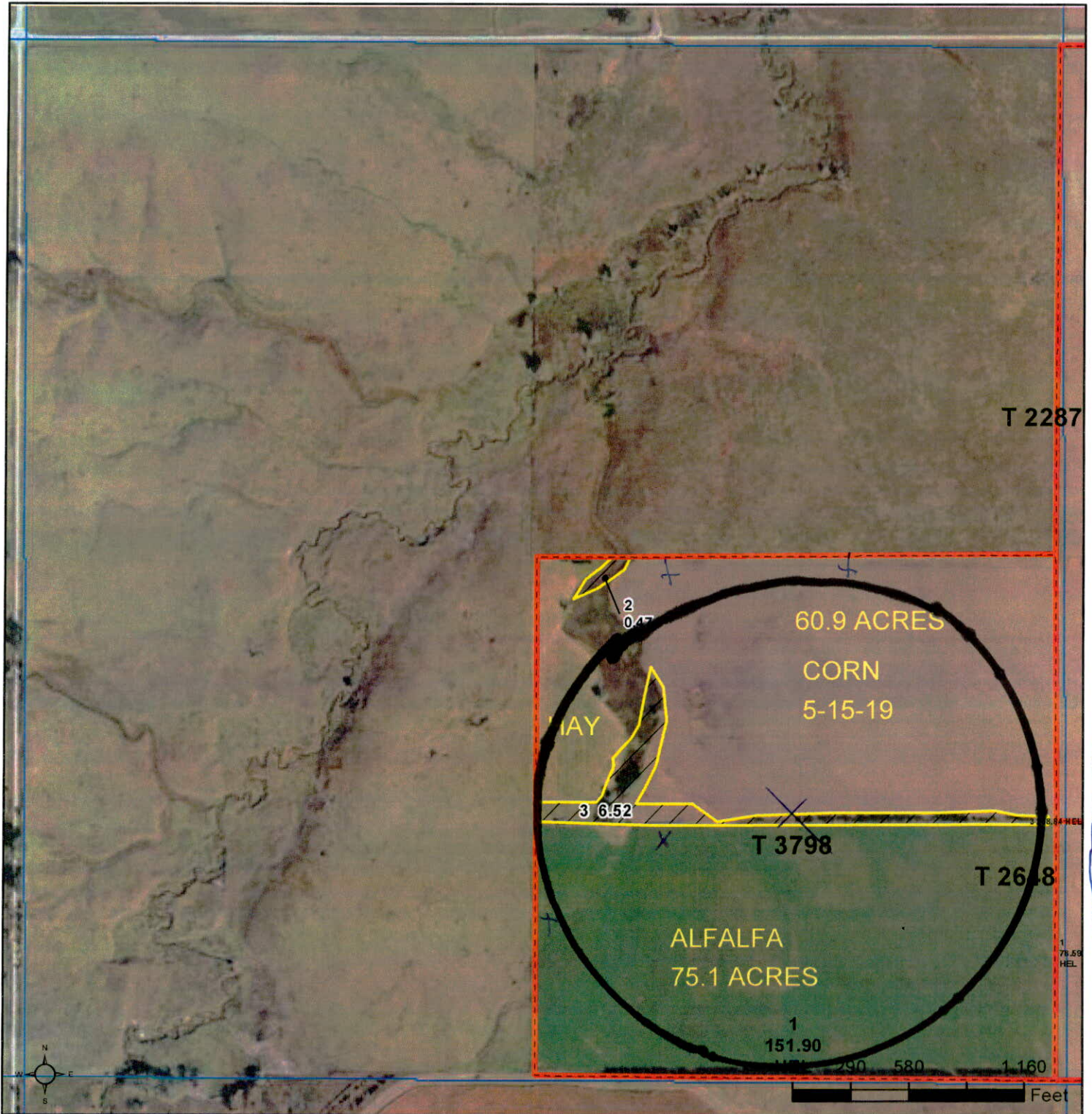
j) Drainage Area Above Dam _____ Acres





United States
Department of
Agriculture

Tripp County, South Dakota



Common Land Unit
Tract Boundary
PLSS
Non-Cropland
Cropland

Wetland Determination Identifiers
Restricted Use
Limited Restrictions
Exempt from Conservation
Compliance Provisions

2019 Program Year

Map Created June 14, 2019

Farm 6497

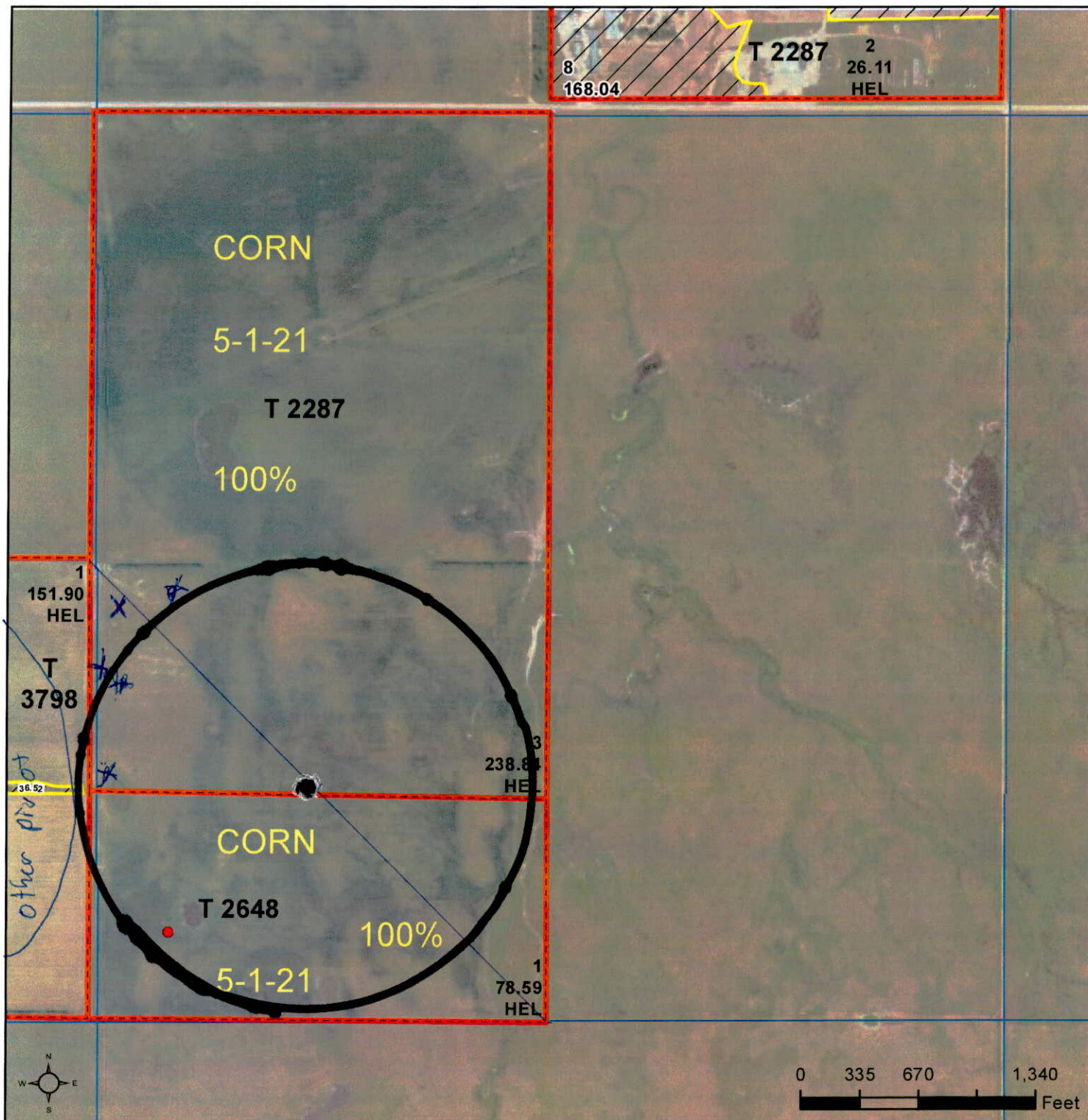
16 -95N -77W

United States Department of Agriculture (USDA) Farm Service Agency (FSA) maps are for FSA Program administration only. This map does not represent a legal survey or reflect actual ownership; rather it depicts the information provided directly from the producer and/or National Agricultural Imagery Program (NAIP) imagery. The producer accepts the data 'as is' and assumes all risks associated with its use. USDA-FSA assumes no responsibility for actual or consequential damage incurred as a result of any user's reliance on this data outside FSA Programs. Wetland identifiers do not represent the size, shape, or specific determination of the area. Refer to your original determination (CPA-026 and attached maps) for exact boundaries and determinations or contact USDA Natural Resources Conservation Service (NRCS).



United States
Department of
Agriculture

Tripp County, South Dakota



Common Land Unit ☐ PLSS

☐ Cropland

☐ Tract Boundary

Wetland Determination Identifiers

☐ Restricted Use

☐ Limited Restrictions

☐ Exempt from Conservation

☐ Compliance Provisions

2021 Program Year

Map Created January 20, 2021

Farm 6497

15 -95N -77W

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

File No. 2833-2

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Blake and Brian Burnham

ADDRESS: 31166 300th St, Winner SD 57580

DATE: March 4, 2022 **PHONE:** 605.208.0383 **EMAIL:** burnhambros@hotmail.com

RE: Modifying Application No. 2833-2 concerning acreage and well locations

COMMENTS:

Blake Burnham with his brother called and asked about modifying Application No. 2833-3 based on the results having test holes completed. A map was supplied showing the location of test holes which may be the location of up to 9 wells (includes the northernmost well labeled as "no" as a possible well site). The location of the 9 wells is the W1/2 section 15; and NE1/4 SE1/4 section 16; all in T95N-R77W. Based on these test hole locations, the Burnham Brothers want to change the location of the acreage to be irrigated identified on Application No. 2833-2 from the SE1/4 section 16 to the NW1/4 section 15; all in T95N-R77W. Two of the 9 wells are existing wells covered by Water Right No. 1260-2 for irrigation of the SW1/4 section 15. Mr. Burnham indicated he would like to be able to use all the wells for irrigating the entire W1/2 section 15. It is hoped the combination of all the wells will produce around 800 gallons per minute which means the pivots in the W1/2 section 15 will run on an alternating basis.

Mr. Burnham also indicated he would also like to change the location of the acreage irrigated from a tributary to the Keyapaha River in the NW1/4 section 15 to the SE1/4 section 16; all in T95N-R77W. I informed Mr. Burnham during the phone call it would require submitting another application to change the location of the acreage. The NW1/4 section 15 is currently covered by Water Right No. 2453-2 held by Rodney Hofeldt.

RECOMMENDED ACTION:

Modify Application No. 2833-2 as described above and note that all of the existing and proposed wells (up to 9 wells) will be used for irrigating all of the acreage in the W1/2 section 15-T95N-R77W. An application may be filed later to change the location of the irrigated acreage in the NW1/4 section 15 from Lost Creek and a dugout to the SE1/4 section 16.

Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

Beck's Well and Irrigation Inc.

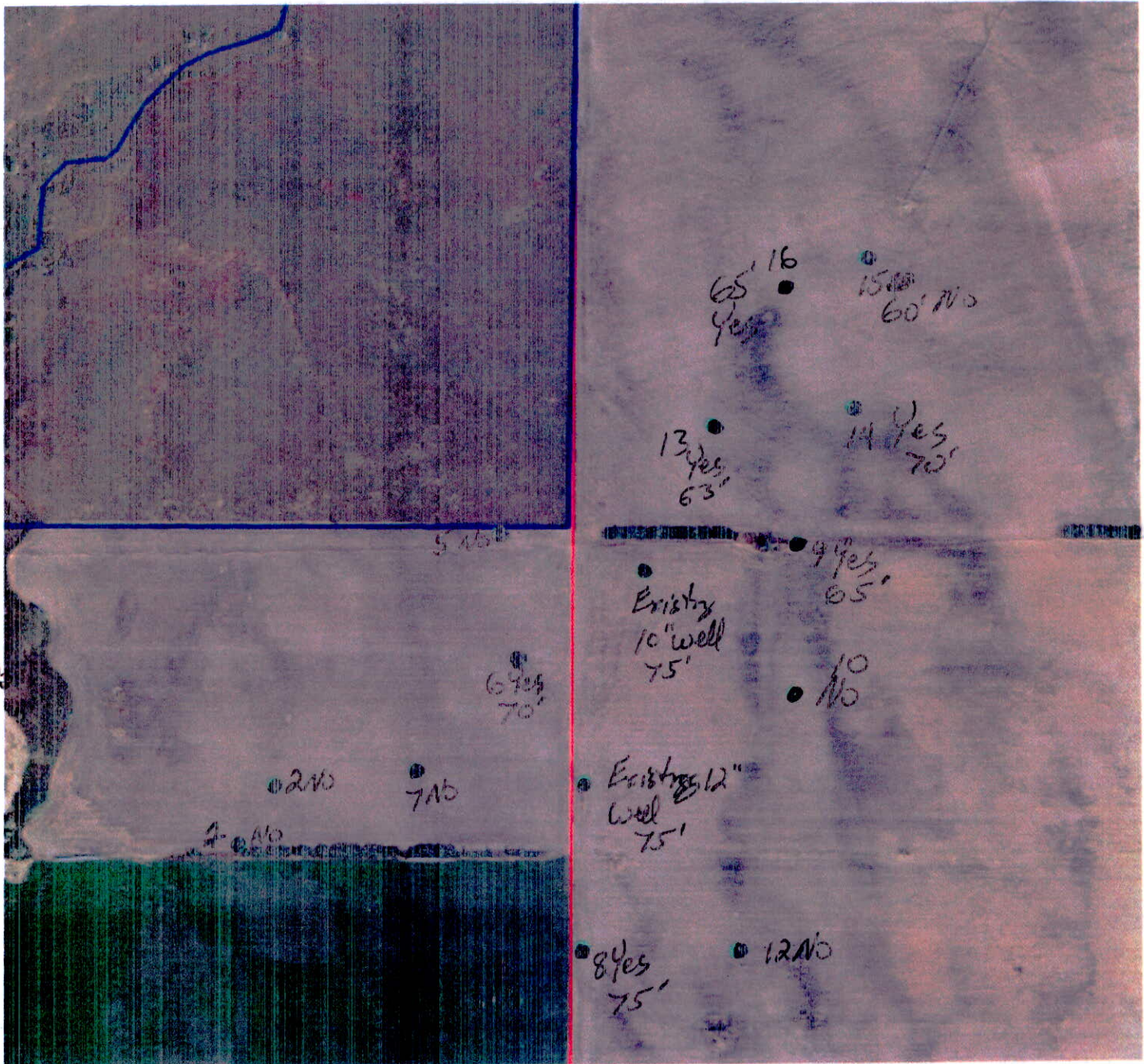


Grower: Brian Burnham

RECEIVED

MAR 04 2022

WATER RIR
PROGP.



11 No



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

File No. 2833-2

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME: Blake and Brian Burnham

ADDRESS: 31166 300th St, Winner SD 57580

DATE: March 16, 2022 **PHONE:** 605.208.0383 **EMAIL:** burnhambros@hotmail.com

RE: Modifying Application No. 2833-2 concerning acreage

COMMENTS:

Blake Burnham with his brother called and asked about once again modifying Application No. 2833-2. This is in reference to file documentation dated March 4, 2022. In that file documentation, Mr. Burnham indicated he would also like to change the location of the acreage irrigated from a tributary to the Keyapaha River in the NW1/4 section 15 to the SE1/4 section 16; all in T95N-R77W. I informed Mr. Burnham during the phone call it would require submitting another application to change the location of the acreage. The NW1/4 section 15 is currently covered by Water Right No. 2453-2 held by Rodney Hofeldt.

Mr. Burnham has now learned that Mr. Hofeldt is unwilling to file an application to change the location of the irrigated acreage to the SE1/4 section 16. Consequently, Mr. Burnham now wants to revise Application No. 2833-2 to go back to irrigating the SE1/4 section 16-T95N-R77W as was originally planned. The location of the existing and proposed diversion points will remain unchanged as described in the March 4, 2022 file documentation.

RECOMMENDED ACTION:

Modify Application No. 2833-2 as described above and note that all of the existing and proposed wells (up to 9 wells) will be used for irrigating all of the acreage in the SE1/4 Section 16 and SW1/4 section 15; all in T95N-R77W.

Ron Duvall, Water Rights Permitting Administrator
SD DANR, Water Rights Program

RECEIPT

WATER RIGHTS PROGRAM South Dakota Department of Agriculture and Natural Resources

Date December 28, 2021

RECEIVED OF Burnham Inc. 314th Ave., Winner SD 57580

The following amount in fees for services rendered as provided for by law:

Fee for Application for Permit No. <u>2833-2</u> to Appropriate Water, to construct and to put water to beneficial use	\$ <u>1050.00</u>
Fee for Application for Permit No. _____ to Appropriate Water for Future use	\$ _____
Fee to retain Future Use Permit No. _____ after period of seven years.	\$ _____
Fee for Inspecting Constructed Works, confirming beneficial use and issuing Water License No. <u>2833-2</u>	\$ <u>200.00</u>
Fee for Filing Transfer Form _____	\$ _____
Fee for _____	\$ _____
Fee for Issuing New Well Driller's License No. _____	\$ _____
Fee for Renewal of Well Driller's License No. _____	\$ _____
Fee for Issuing Well Pump Installer's License No. _____	\$ _____
Fee for Renewal of Well Pump Installer's License No. _____	\$ _____
(Any Other Work Provided by Law) TOTAL	\$ <u>1250.00</u>

By Eric Gronlund
Chief Engineer
gm

RECEIVED

DEC 28 2021

WATER RIGHTS
PROGRAM

Brian Burnham
31166 300th Street
Winner, SD 57580

12-26-2021

DENR – Water Rights
523 E Capitol Ave
Pierre, SD 57501-3182

Re: Irrigation permits

Attached are 2 separate irrigation permit applications. I did them as 2 separate applications to keep the legal descriptions and other details accurate to the particular irrigation circles. However, I would like to apply for just one permit for the total 260 acres, so that I can better use my wells.

I believe that I have the correct payment enclosed. If I am wrong, please let me know.

Please call 605-208-0383 if you have any questions.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be 'B. Burnham', with a horizontal line extending to the right.

Brian Burnham

Water Rights Program - File Documentation

NAME: Blake Burnham

ADDRESS: 31166 300th St, Winner SD 57580

DATE: January 6, 2022

RE: Application No. 2833-2

COMMENTS:

I talked with Blake Burnham regarding the three applications he and his brother submitted. Blake stated he was aware that Water Right No. 1260-2 covered irrigation in the SW 1/4 Sec 15-T95N-R77W. He was unsure what he was doing when he submitted the applications. I told him we would disregard the application for SW 1/4 Sec 15-T95N-R77W. Application No. 2833-2 would be for irrigation of the SE 1/4 Section 16-T95N-R77W. We would also be refunding the overpayment of \$200 once the permits have gone through the process.

Blake said they would like to be able to use the wells authorized by No. 1260-2 as backup if necessary.

Blake indicated the test holes had not been drilled. I requested the test hole logs be submitted as soon as they are completed.



Karen Schlaak
Water Rights Program

Schlaak, Karen

From: Schlaak, Karen
Sent: Tuesday, March 1, 2022 10:45 AM
To: burnhambros@hotmail.com
Subject: Water Permit Application Nos. 2832-3 and 2834-2
Attachments: 2580.pdf

Attached is a copy of the report, chief engineer recommendations and information regarding the public notice for the two water permit applications. As stated in the letter, please contact the papers as soon as possible to authorize publication and arrange for payment.

Since the applications were submitted in two different names (Blake Burnham and Brian Burnham) each permit has a separate public notice. I have emailed both the Plainsman and the Winner Advocate the two notices to be published next week. Let me know if you have questions.

This information is being mailed to you today.

Karen Schlaak

DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>

this public notice was pulled.



Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, March 9, 2022 12:54 PM
To: burnhambros@hotmail.com
Subject: Water Permit Application Nos. 2833-2 and 2834-2
Attachments: 2756.pdf

Blake,

Attached is a copy of the revised report, chief engineer recommendations and information regarding the public notices for your two water permit applications. Application No. 2833-2 has been amended with the changes you discussed with Ron Duvall. The notices are scheduled to be published on March 16, 2022. As stated in the letter, please contact the paper(s) as soon as possible to authorize publication and arrange for payment. This information is being mailed to you today.

Karen Schlaak
DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>



Duvall, Ron

From: Burnham Bros <burnhambros@hotmail.com>
Sent: Wednesday, March 16, 2022 2:29 PM
To: Duvall, Ron
Subject: Re: [EXT] Revise Application and Public Notice

Yes that is correct. Thank you for your time and the hassle. Please move forward with the permit

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Duvall, Ron <Ron.Duvall@state.sd.us>
Sent: Wednesday, March 16, 2022 1:45:29 PM
To: burnhambros@hotmail.com <burnhambros@hotmail.com>
Subject: Revise Application and Public Notice

Blake,

Attached is document documenting our conversation and a revised public notice. Please look at these ASAP and let me know if they look OK. One thing I assumed, yes that dangerous word, is that use of all the wells would be on the SE1/4 sec 16 and SW1/4 sec 15 rather than on the W1/2 of sec 15 as you had hoped.

Please let me know if it looks OK so we can get the notice to the paper for publication next week.

Thank you,

Ron

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, March 17, 2022 8:45 AM
To: burnhambros@hotmail.com
Subject: Notice to be published March 23, 2022
Attachments: 2833-2public.short_finalbyRD20220316.docx

Attached is a copy of the revised public notice for Application No. 2833-2. The notice has been sent to the Plainsman, Huron SD (605 353-7414) and the Winner Advocate (605 842-1481) to be published on April 23, 2022.

Please contact the papers as soon as possible to authorize publication and arrange for payment.

Karen Schlaak

DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>



Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, March 17, 2022 8:36 AM
To: Winner Advocate
Subject: 2833-2, Brian Burnham
Attachments: 2833-2public.short_finalbyRD20220316.docx; FORM8.FRM.doc

Attached is a notice to be published on March 23, 2022.

Brian Burnham, 31160 300th St, Winner SD 57580 (605 208-0383) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>



AFFIDAVIT OF PUBLICATION

State of South Dakota, county of Tripp-ss.

Dan Bechtold

of said county being first duly sworn, on oath says that he
is the Editor of the

WINNER ADVOCATE

a weekly newspaper printed and published at Winner, said
county of Tripp, and has full and personal knowledge of all
the facts herein stated that said newspaper is a legal
newspaper and has a bona fide circulation of at least two
hundred copies weekly and has been published within said
county for fifty-two successive weeks prior to the
publication of the notice herein mentioned, and was
printed wholly or in part in an office maintained at said
place of publication; that the

100 lines @ 1 column X 90%

Notice of Application

Brian Burnham

a printed copy of which, taken from the paper in which
the same was published, is attached to this sheet, and is
made a part of this affidavit, was published in said
newspaper at least once in each week for 1 week(s), on
the day of each week on which said newspaper was
regularly published to wit:

3-16-2022

That the full amount of the fees for the publication of the
*annexed notice is \$37.80

Dan Bechtold

Subscribed and sworn to before me this 16th
day of March, 2022

Laura Brown

Notary Public

County of Tripp, South Dakota

My Commission Expires June 12, 2025



RECEIVED

MAR 21 2022

WATER RIGHTS
PROGRAM

NOTICE OF APPLICATION NO.2833-2

to Appropriate Water

Notice is given that Brian Burnham, 31166
300th St, Winner SD 57580 has filed an appli-
cation for a water permit to appropriate 1.85
cubic feet of water per second from up to 9
wells to be completed into the Quaternary Eo-
lian Aquifer (approximately 75 feet deep) lo-
cated in the W 1/2 section 15; and NE 1/4 SE
1/4 section 16; all for irrigation of 130 acres
in the NW 1/4 Section 15; all in T95N-R77W.
Two of the wells are existing wells covered by
Water Right No. 1260-2 for irrigation of the
SW 1/4 section 15-T95N-R77W. The applicant
requests that the 2 existing wells and the 7 pro-
posed wells be used to irrigate all the acreage
in the W 1/2 Section 15-T95N-R77W. The
pivots will be operated on an alternating basis.
This site is located approximately 24 miles
southwest of Winner SD.

Pursuant to SDCL 46-2A-2, the Chief En-
gineer recommends APPROVAL of Applica-
tion No. 2833-2 with qualifications because 1)
unappropriated water is available, 2) existing
domestic water uses and water rights will not
be unlawfully impaired, 3) it is a beneficial use
of water, and 4) it is in the public interest as it
pertains to matters within the regulatory au-
thority of the Water Management Board. The
Chief Engineer's recommendation with quali-
fications, the application, and staff report are

available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by March 28, 2022.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party or record or a participant in any hearing that may be held. Any comment must be filed by March 28, 2022.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, The Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of a hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of \$37.80

Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, March 9, 2022 11:52 AM
To: 'rcrandall@plainsman.com'
Subject: 2833-2, Brian Burnham
Attachments: 2833-2public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on March 16, 2022.

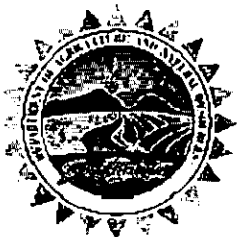
Brian Burnham, 31166 300th St, Winner SD 57580 (605 208-0383) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>



Schlaak, Karen

From: Schlaak, Karen
Sent: Wednesday, March 9, 2022 11:51 AM
To: Winner Advocate
Subject: 2833-2, Brian Burnham
Attachments: 2833-2public.short_final.docx; FORM8.FRM.doc

Attached is a notice to be published on March 16, 2022.

Brian Burnham, 31166 300th St, Winner SD 57580 (605 208 0383) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

**NOTE: TO BE SURE OF PUBLICATION ON
THE CORRECT DATES, CONTACT
THE NEWSPAPERS RIGHT AWAY.**

March 9, 2022

Brian Burnham
31166 300th St
Winner SD 57580

Dear Mr. Burnham:

Water Permit Application No. 2833-2 for irrigation use have been examined and found to comply with the South Dakota Water Laws and applicable rules. A notice has been sent to the Winner Advocate printed at Winner SD (Ph # 605 842-1481) and the Plainsman printed at Huron SD (Ph # 605 353-7414). You will need to contact the newspapers and authorize publication of this notice. For your information, a copy of the notice, the recommendation of the Chief Engineer and report on the application are enclosed. Please review the notice prior to publication and notify this office, if you have any corrections or questions.

Be sure to contact the above newspapers to authorize publication of your Notice and to arrange for payment. Early contact with the papers can eliminate delays. Upon receiving authorization from you, the publishers have been instructed to publish your notice. The newspapers have also been instructed to send us the Proof of Publication. We must receive Proof of Publication before action can be taken on the application.

Sincerely,

Karen Schlaak
Water Rights Program
(605) 773-3352

enclosures

NOTE: If you plan to contest any part of the Chief Engineer's recommendation, you must file a petition pursuant to the procedures outlined in the attached notice of hearing. The Water Management Board will then consider your concerns during a hearing on the application.

NOTICE OF APPLICATION NO. 2833-2 to Appropriate Water

Notice is given that Brian Burnham, 31166 300th St, Winner SD 57580 has filed an application for a water permit to appropriate 1.85 cubic feet of water per second from up to 9 wells to be completed into the Quaternary Eolian Aquifer (approximately 75 feet deep) located in the W 1/2 section 15; and NE 1/4 SE 1/4 section 16; all for irrigation of 130 acres in the NW 1/4 Section 15; all in T95N-R77W. Two of the 9 wells are existing wells covered by Water Right No. 1260-2 for irrigation of the SW1/4 section 15-T95N-R77W. The applicant requests that the 2 existing wells and the 7 proposed wells be used to irrigate all the acreage in the W 1/2 Section 15-T95N-R77W. The pivots will be operated on an alternating basis. This site is located approximately 24 miles southwest of Winner SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2833-2 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by March 28, 2022.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by March 28, 2022.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of_

Schlaak, Karen

From: Schlaak, Karen
Sent: Thursday, March 17, 2022 8:38 AM
To: 'rcrandall@plainsman.com'
Subject: 2833-2, Brian Burnham
Attachments: 2833-2public.short_finalbyRD20220316.docx; FORM8.FRM.doc

Attached is a notice to be published on March 23, 2022.

Brian Burnham, 31160 300th St, Winner SD 57580 (605 208-0383) has been notified to contact you to authorize publication and arrange for payment.

Please send the affidavit or return the attached Proof of Publication form ASAP to the Water Rights Program, 523 E Capitol, Pierre SD 57501.

Let me know if you have questions. Please acknowledge receipt of this email.

Karen Schlaak

DANR - Water Rights Program
(605) 773-3352
Website: <https://danr.sd.gov>



NOTICE OF APPLICATION NO. 2833-2 to Appropriate Water

Notice is given that Brian Burnham, 31166 300th St, Winner SD 57580 has filed an application for a water permit to appropriate 1.85 cubic feet of water per second from up to 9 wells to be completed into the Quaternary Eolian Aquifer (approximately 75 feet deep) located in the W 1/2 section 15; and NE 1/4 SE 1/4 section 16; all for irrigation of 130 acres in the SE 1/4 Section 16; all in T95N-R77W. Two of the 9 wells are existing wells covered by Water Right No. 1260-2 for irrigation of the SW1/4 section 15-T95N-R77W. The applicant requests that the 2 existing wells and the 7 proposed wells be used to irrigate all the acreage in the SE1/4 Section 16 and SW1/4 section 15; all in T95N-R77W. The pivots will be operated on an alternating basis. This site is located approximately 24 miles southwest of Winner SD.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends APPROVAL of Application No. 2833-2 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://danr.sd.gov/public> or contact Ron Duvall for this information, or other information, at the Water Rights Program address provided below.

Any person interested in opposing this application or recommendation shall allege that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 46-2A-9 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 46-2-9 and 46-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://danr.sd.gov/public> or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol, Pierre SD 57501" or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by April 4, 2022.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by April 4, 2022.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of

AFFIDAVIT OF PUBLICATION

State of South Dakota, county of Tripp-ss.

Dan Bechtold

of said county being first duly sworn, on oath says that he
is the Editor of the

WINNER ADVOCATE

a weekly newspaper printed and published at Winner, said
county of Tripp, and has full and personal knowledge of all
the facts herein stated that said newspaper is a legal
newspaper and has a bona fide circulation of at least two
hundred copies weekly and has been published within said
county for fifty-two successive weeks prior to the
publication of the notice herein mentioned, and was
printed wholly or in part in an office maintained at said
place of publication; that the

102 lines @ 1 column X 90%

Notice of Application

Brian Burnham

a printed copy of which, taken from the paper in which
the same was published, is attached to this sheet, and is
made a part of this affidavit, was published in said
newspaper at least once in each week for 1 week(s), on
the day of each week on which said newspaper was
regularly published to wit:

3-23-2022

That the full amount of the fees for the publication of the
*annexed notice is \$38.56

Dan Bechtold

Subscribed and sworn to before me this 23rd
day of March, 2022

Laura Brown

Notary Public

County of Tripp, South Dakota

My Commission Expires June 12, 2025



RECEIVED

MAR 28 2022

WATER RIGHTS
PROGRAM

NOTICE OF APPLICATION NO. 2833-2

to Appropriate Water

Notice is given that Brian Burnham, 31166
300th St, Winner SD 57580 has filed an appli-
cation for a water permit to appropriate 1.85
cubic feet of water per second from up to 9
wells to be completed into the Quaternary Eo-
lian Aquifer (approximately 75 feet deep) lo-
cated in the W 1/2 section 15; and NE 1/4 SE
1/4 section 16; all for irrigation of 130 acres
in the SE 1/4 Section 16; all in T95N-R77W.
Two of the 9 wells are existing wells covered
by Water Rights No. 1260-2 for irrigation of
the SW 1/4 section 15-T95N-R77W. The ap-
plicant requests that the 2 existing wells and
the 7 proposed wells be used to irrigate all the
acreage in the SE 1/4 Section 16 and SW 1/4
section 15; all in T95N-R77W. The pivots will
be operated on an alternating basis. This site
is located approximately 24 miles southwest
of Winner SD.

Pursuant to SDCL 46-2A-2, the Chief En-
gineer recommends APPROVAL of Applica-
tion No. 2833-2 with qualifications because 1)
unappropriated water is available, 2) existing
domestic water uses and water rights will not
be unlawfully impaired, 3) it is a beneficial use
of water, and 4) it is in the public interest as it
pertains to matters within the regulatory au-
thority of the Water Management Board. The

Chief Engineer's recommendation with quali-
fications, the application, and staff report are
available at <https://danr.sd.gov/public> or con-
tact Ron Duvall for this information, or other
information, at the Water Rights Program ad-
dress provided below.

Any person interested in opposing this ap-
plication or recommendation shall allege that
the application, upon approval, will cause in-
jury to the person that is unique from any in-
jury suffered by the public in general. The
injury must concern a matter either within the
regulatory authority found in SDCL 46-2A-9
for approval or denial of the application, or
other matter concerning the application within
the regulatory authority of the board to act
upon as defined by SDCL 46-2-9 and 46-2-11,
or both. Any person meeting the petitioner re-
quirements and wishing to be a party of record
in a contested case hearing shall file a written
petition to oppose the application with BOTH
the applicant and Chief Engineer. A petition
opposing the application shall be filed on a
form provided by the Chief Engineer. The pe-
tition form is available online at
<https://danr.sd.gov/public> or by contacting the
Chief Engineer. The Chief Engineer's address
is "Water Rights Program, Foss Building, 523
E Capitol, Pierre SD 57501" or call (605) 773-
3352. The applicant's mailing address is given
above. If contesting the Chief Engineer's rec-
ommendations, the applicant shall also file a
petition. A petition filed by either an interested
person or the applicant must be filed by April
4, 2022.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel, if legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://danr.sd.gov/public> or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by April 4, 2022.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is received, the Chief Engineer shall act on the application pursuant to the recommendation with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider this application. Notice of the hearing will be given to the applicant and any person filing a petition.

Published once at the total approximate cost of \$38.56 (12)

RECEIVED

MAR 30 2022

WATER RIGHTS
PROGRAM

Proof Of Publication

Huron Plainsman
49 3rd Street SE
Huron, SD 57350
605-353-7402

Legal Notice Number: 1316

I, Mckenzie Castillo, being duly sworn on oath say that the Plainsman is a daily paper published at Huron, Beadle County South Dakota, and that said newspaper has a bona fide circulation of at least 250 copies daily; that said newspaper has been published within said county for fifty-two consecutive weeks immediately prior to this date, that said newspaper is printed in whole or in part, in an office maintained at said place of publication; that I am a Legal Advertising Coordinator of said newspaper and know that facts herein state. The annexed notice headed: Brian Burnham – Water #2833-2 was published for one day, in said newspaper and not in any supplement of the said newspaper; the publication was on 3/23/2022. That the full amount of the fee charged for the publishing \$ 46.89 insures to the benefit of the publisher of said newspaper; that no agreement or understanding for the division thereof has been made with any other person, and that no part thereof has been agreed to be paid to any person whom so ever.

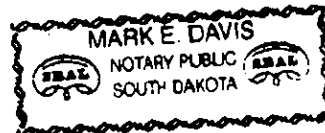
Mckenzie Castillo

Subscribed and sworn to me before this date 3/30/22.

Mark E. Davis

Notary Public, South Dakota

My Term Expires 12/27/2024



or recommendation shall state that the application, upon approval, will cause injury to the person that is unique from any injury suffered by the public in general. The injury must concern a matter either within the regulatory authority found in SDCL 48-2A-6 for approval or denial of the application, or other matter concerning the application within the regulatory authority of the board to act upon as defined by SDCL 48-2-9 and 48-2-11, or both. Any person meeting the petitioner requirements and wishing to be a party of record in a contested case hearing shall file a written petition to oppose the application with BOTH the applicant and Chief Engineer. A petition opposing the application shall be filed on a form provided by the Chief Engineer. The petition form is available online at <https://dnr.sd.gov/> public or by contacting the Chief Engineer. The Chief Engineer's address is "Water Rights Program, Rose Building, 613 E Capitol, Pierre, SD 57501 or call (605) 773-3352. The applicant's mailing address is given above. If contesting the Chief Engineer's recommendation, the applicant shall also file a petition. A petition filed by either an interested person or the applicant must be filed by April 4, 2022.

The petition shall include a statement describing the unique injury upon approval of the application on the petitioner, the petitioner's reasons for opposing the application, and the name and mailing address of the petitioner or the petitioner's legal counsel. If legal counsel is obtained.

Any interested person may file a comment on the application with the Chief Engineer. The comment shall be filed on a form provided by the Chief Engineer and is available online at <https://dnr.sd.gov/> public or by calling (605) 773-3352 or writing the Chief Engineer at the address provided above. Filing a comment does not make the commenter a party of record or a participant in any hearing that may be held. Any comment must be filed by April 4, 2022.

If the applicant does not contest the recommendation of the Chief Engineer and no petition to oppose the application is filed, the Chief Engineer will forward the application to the Water Management Board with no hearing held before the Water Management Board. If a petition opposing the application or contesting the recommendation is filed, then a hearing will be scheduled, and the Water Management Board will consider the application in accordance with the hearing. The hearing is the opportunity for the person filing a petition.

No. 1316 (adv)
Published one page at the total approximate cost of \$48.88.

F.P. 03-23-22 NOTICE OF APPLICATION NO. 2833-2 to

Appropriate Water Rights. The applicant, Brian Buryham, 31608 300th St., Winner, SD 57580 has filed an application for a water permit to appropriate 25 cubic feet of water per second from up to 9 wells to be completed into the Quaternary Eolian Aquifer (approximately 75 feet deep) located in the W 1/2 section 15; and NE 1/4 SE 1/4 section 16; all for irrigation of 100 acres in the SE 1/4 Section 16; all in T86N-R77W. Two of the 9 wells are existing wells covered by Water Rights No. 1260-3 for irrigation of the SW 1/4 section 15-T86N-R77W. The applicant requests that the 2 existing wells and the 7 proposed wells be used to irrigate all the acreage in the SE 1/4 Section 16 and SW 1/4 section 15; all in T86N-R77W. The photo will be operated on an alternating basis. This site is located approximately 24 miles southwest of Winner, SD. The Chief Engineer's recommendation is APPROVAL of Application No. 2833-2 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unduly impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board. The Chief Engineer's recommendation with qualifications, the application, and staff report are available at <https://dnr.sd.gov/> public or contact Ron Duval for the information, or other information, at the Water Rights Program address provided above. Any person wishing to oppose the application



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

**RECOMMENDATION OF CHIEF ENGINEER FOR WATER PERMIT
APPLICATION NO. 2833-2, Brian Burnham**

Pursuant to SDCL 46-2A-2, the following is the recommendation of the Chief Engineer, Water Rights Program, Department of Environment and Natural Resources concerning Water Permit Application No. 2833-2, Brian Burnham, 31166 300th Street, Winner SD 57580

The Chief Engineer is recommending APPROVAL of Application No. 2833-2 because 1) there is reasonable probability that there is unappropriated water available for the applicant's proposed use, 2) the proposed diversion can be developed without unlawful impairment of existing domestic water uses and water rights, 3) the proposed use is a beneficial use and 4) it is in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board with the following qualifications:

1. The wells approved under Water Permit No. 2833-2 are located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.
2. The wells authorized by Permit No. 2833-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.
3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

See report on application for additional information.

Eric Gronlund, Chief Engineer
February 28, 2022

REPORT TO THE CHIEF ENGINEER
ON
WATER PERMIT APPLICATION NO. 2833-2
BRIAN BURNHAM
AND
WATER PERMIT APPLICATION NO. 2834-2
BLAKE BURNHAM
FEBRUARY 28, 2022

Water Permit Application No. 2833-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cubic feet of water per second (cfs) from 2 existing wells and 7 proposed wells (approximately 100 feet deep) to be completed into the Quaternary Eolian aquifer functioning as an extension of the Ogallala aquifer. The proposed well locations are located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 16 and W $\frac{1}{2}$ Section 15 and the land to be irrigated is the SE $\frac{1}{4}$ Section 16; all in T95N-R77W in Tripp County approximately 24 miles southwest of Winner, SD. The two existing wells authorized under Water Right No. 1260-2 will be used and are accounted for as part of the nine wells for this application.

Water Permit Application No. 2834-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cubic feet of water per second (cfs) from up to 4 wells (approximately 100 feet deep) located in the W $\frac{1}{2}$ SE $\frac{1}{4}$ Section 11 and to be completed into the Quaternary Terrace aquifer functioning as an extension of the Ogallala aquifer. The land to be irrigated and the proposed well locations are located in the SE $\frac{1}{4}$ Section 11 T95N-R77W in Tripp County approximately 23 miles southwest of Winner, SD.

AQUIFER:
2833-2

- Quaternary aged Eolian (Quaternary Eolian) [QE]

2834-2

- Quaternary aged Terrace (Quaternary Terrace) [QT]

Review of available hydrologic and geologic information indicates the formations likely to be encountered at both applicant's proposed well locations are either Quaternary aged Eolian or Terrace deposits. Locally, both of these formations were deposited on an erosional surface of the Ogallala Group along the Keya Paha River valley (see Figure 1). The Ogallala Group is a group of formations that comprise the Ogallala aquifer. Both of the Quaternary aged Eolian or Terrace deposits the applicants intend to withdraw water from consist of sand that has been deposited physically adjacent to the Ogallala Group, but do not have a significant portion of the Ogallala Group underlying either formation.

Filipovic (2004) stated:

"In South Dakota, the High Plains aquifer consists of one or more hydraulically connected geologic units of late Tertiary or Quaternary age. In ascending order, the late Tertiary rocks consist

of the White River Group, Arikaree Group, and Ogallala Group. The Quaternary sediments consist of alluvial and eolian deposits.”

Historically, the Water Rights Program and the Water Management Board has managed the High Plains aquifer by its primary groups, the Ogallala aquifer and the Arikaree aquifer. Where other permeable sediments such as eolian, alluvium and terrace deposits have directly overlain the Ogallala or Arikaree Group, the Water Rights Program has considered those sediments as a part of the Ogallala or Arikaree aquifer. In this case, the eolian and terrace deposits are primarily laterally adjacent to the Ogallala aquifer. Based on a well completion report submitted with this application and descriptions of historically encountered lithology while drilling in this area provided by a local well driller (Beck, 2022) working on these two projects, no Ogallala Group materials have been encountered in the area of either applicant’s proposed well sites. Furthermore, the Arikaree Group where present lacks sufficient permeability to serve as a water source (Beck, 2022). The direction of groundwater movement in the High Plains aquifer is toward the Keya Paha River (Filipovic, 2004) which means water moves through both the Quaternary Eolian and Quaternary Terrace aquifers. Thus based on this information, it is reasonable to consider the portions of the Quaternary Eolian and Quaternary Terrace aquifer these two applications propose to withdraw water from as extensions of the Ogallala aquifer. Therefore, this report will discuss the availability of water in the Ogallala aquifer and the potential for unlawful impairment of existing appropriative and domestic users with adequate wells completed into the Ogallala, Quaternary Eolian, or the Quaternary Terrace aquifer that are relevant to these applications.

Aquifer Characteristics

Quaternary Eolian aquifer

Quaternary aged Eolian deposits are a group of wind-blown and deposited sediments that range from silt to medium-grained sand deposited as sheets, barchan, linear, and dome like dunes or as a veneer on uplands (Martin et al, 2004). The particular deposit that Application No. 2833-2 proposes to withdraw water from is generally wind-blown sand that can be calcareous that was derived from the Ash Hollow and Valentine Formations, which are part of the Ogallala Group (Filipovic, 2004). This deposit has an approximate areal extent of 610 acres (Martin et al, 2004). The direction of groundwater movement is toward the Keya Paha River (Filipovic, 2004).

Quaternary Terrace aquifer

Quaternary aged Terrace deposits are a group of deposits of clay to boulder sized clasts deposited as pediments, paleochannels, and terrace fills of former flood plains (Martin et al, 2004). Filipovic (2004) noted that in Tripp and Gregory counties, “... alluvium is present in the fluvial flood plain and as terraced sediments along the more active streams and rivers.” The areal extent of the deposit Application No. 2834-2 proposes to withdraw water from is approximately 835 acres (Martin et al, 2004). The direction of groundwater movement is toward the Keya Paha River (Filipovic, 2004). The well completion report filed with Application No. 2834-2 indicated “Coarse Sand/Sandstone Fragments” were encountered from 2 to 200 feet below ground surface (bgs), “Fragments Light Brown Clay Fine Gravel/Very Coarse” from 40 to 60 feet bgs, “sand Old River Bed Black Shale Fragments” from 66 to 68 bgs, and “Black Shale Unconsolidated” from 68 to 75 bgs. The static water level was 19 feet bgs at the time of well completion in November, 2021.

Ogallala aquifer

The Ogallala Group is comprised of sand, silt, silty clay, sandstone, siltstone, and surficial gravel deposits (Filipovic, 2004 and 2011). The main body of the Ogallala aquifer in South Dakota underlies approximately one million acres (Filipovic, 2004 and 2011; Martin et al, 2004). Saturated aquifer thickness can be up to approximately 200 feet (Filipovic, 2004; Water Rights, 2022e). The general direction of ground water flow is generally toward the southeast, but locally is frequently toward the edge of the deposits or toward surface water bodies, such as the Keya Paha River, that have incised the aquifer and hydrologically connected sediments. Locally, the Ogallala aquifer materials can be found at or near land surface, where present, and static water levels are generally between 10 and 50 feet below ground surface (Water Rights, 2022e). The Ogallala aquifer is generally unconfined but can be confined locally (Water Rights, 2022e). The Ogallala aquifer in South Dakota is split into two portions, the main body west of Ponca Creek and the remnant body east of Ponca Creek. Ponca Creek has completely incised through the aquifer along its channel. The area of this application is in the area of the main body of the aquifer.

SOUTH DAKOTA CODIFIED LAW (SDCL) 46-2A-9

Pursuant to SDCL 46-2A-9, "A permit to appropriate water may be issued only if there is a reasonable probability that there is unappropriated water available for the applicant's proposed use, that the diversion point can be developed without unlawful impairment of existing domestic water uses and water rights, and that the proposed use is a beneficial use and in the public interest as it pertains to matters of public interest within the regulatory authority of the Water Management Board as defined by SDCL 46-2-9 and 46-2-11." This report will address the availability of unappropriated water and the potential for unlawful impairment of existing domestic water uses and water rights within the localized portions of the Quaternary Eolian and Quaternary Terrace aquifers as well as water availability from the Ogallala aquifer.

WATER AVAILABILITY:

These applications proposes to appropriate water from portions of the Quaternary Eolian and Quaternary Terrace aquifers where these specific portions are acting as extensions of the Ogallala aquifer. The probability of unappropriated water available from the aquifer can be evaluated by considering SDCL 46-6-3.1, which requires:

"No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source. An application may be approved, however, for withdrawals of groundwater from any groundwater formation older than or stratigraphically lower than the greenhorn formation in excess of the average estimated annual recharge for use by water distribution systems."

All three aquifer are not stratigraphically lower/older than the Greenhorn Formation and the proposed use is not for a water distribution system as defined in SDCL 46-1-6(17). Therefore, a comparison of average annual recharge and average annual withdrawals is required for these applications.

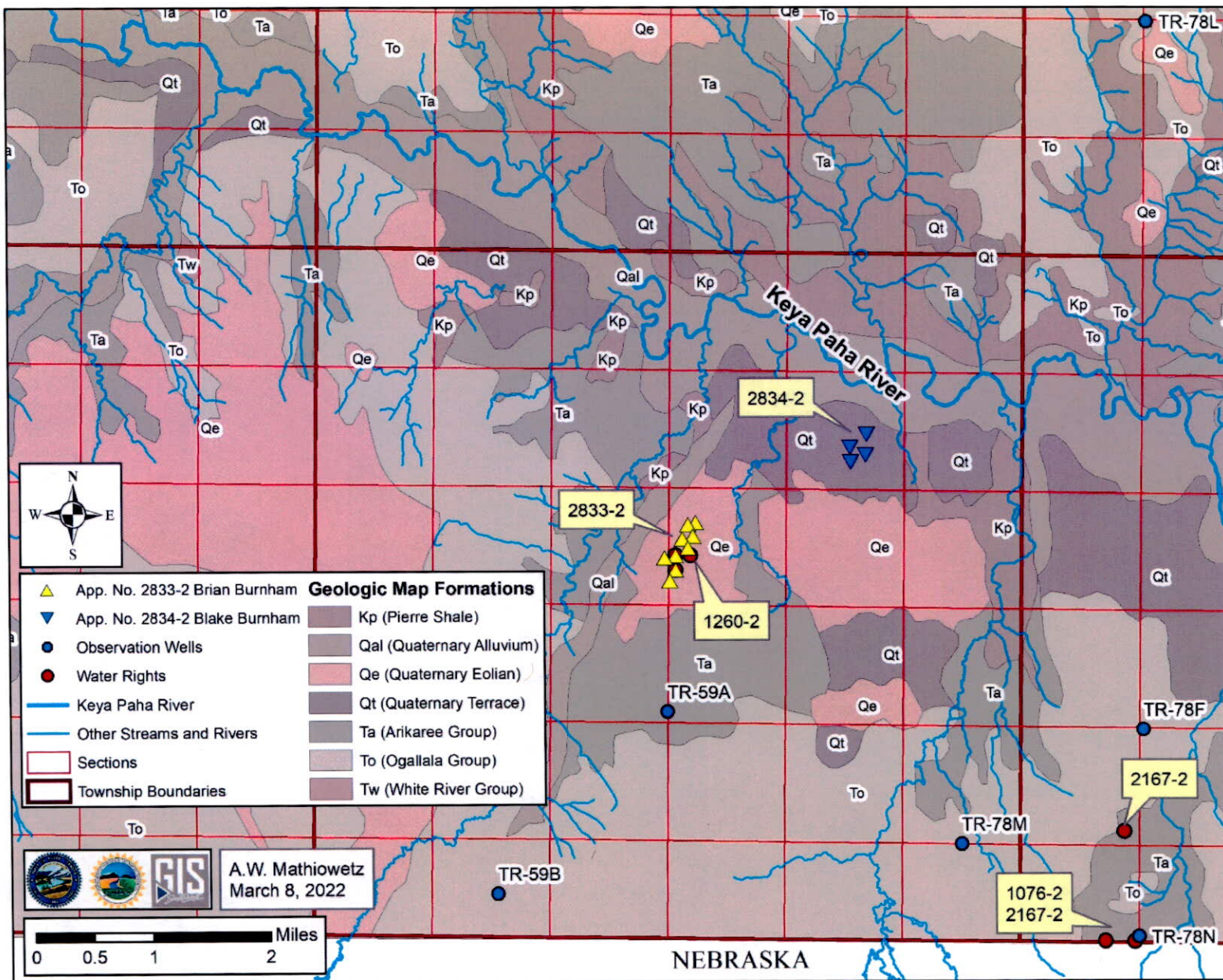


Figure 1- Geologic formations map (modified from: Martin et al, 2004) with groundwater water rights (Water Rights, 2022d), Ogallala aquifer observation wells (Water Rights, 2022c) and local streams and rivers

Hydrologic Budget

Both of the portions of the Quaternary Eolian and Quaternary Terrace aquifers these applications propose to use are limited in areal extent (Martin et al. 2004). The potentiometric surface information in Filipovic (2004) indicates that these two aquifers are really functioning as an extension of the Ogallala aquifer. That means applying estimates of recharge rates to aquifers of significantly larger areal extent over the limited areal extent of these aquifers would produce a relatively small mathematically estimated recharge rate that is not reflective of the unique hydrogeologic conditions of these aquifers. Also, Water Right No. 1260-2, which is labeled as withdrawing from the Arikaree aquifer, will be considered as completed into the Quaternary Eolian aquifer based on current lithologic information that was not available at the time the permit was issued and will also be added to the hydrologic budget of the Ogallala aquifer for the previously discussed reasons. There are no other water rights/permits completed into these portions of the Quaternary Eolian or Quaternary Terrace aquifers that can be considered as withdrawing water from the Ogallala aquifer. Therefore, the hydrologic budget section of this report will only discuss the Ogallala aquifer.

Recharge

The Ogallala aquifer is primarily recharged by the infiltration of precipitation (Filipovic, 2004 and 2011). Kolm and Case (1983) estimated a range of recharge rates for the High Plains aquifer using a two-dimensional, finite-difference model. Kolm and Case (1983) noted previous recharge rate estimates ranged from 1.0 to 3.07 inches per year (in/yr) depending on author(s) and assumptions made by the author(s). Hedges and Burch (1985) used both base-flow recession and observation well data analysis to develop their recharge rate estimates to the Ogallala aquifer specifically. Cederberg (2021) cited a combination of sources to determine the approximate areal extent of the main body of the Ogallala aquifer to be approximately 1,005,360 acres. Table 1 lists the average annual recharge rate in acre-feet per year (ac-ft/yr) based on the source of the recharge rate and Cederberg's (2021) estimated areal extent of the Ogallala aquifer.

Table 1- Estimated average annual recharge rate to the main body of the Ogallala aquifer (Kolm and Case, 1983; Hedges and Burch 1985; Cederberg, 2021)

Est. Avg. Annual Recharge Rate (in/yr)	Estimation Method	Source	Est. Avg. Annual Recharge Rate (ac-ft/yr)
1.3	Computer Model	Kolm and Case, 1983	108,914
1.8	Computer Model	Kolm and Case, 1983	150,804
1.88	Base-Flow Recession	Hedges and Burch, 1985	157,506
3.4	Obs. Well Data	Hedges and Burch, 1985	284,852

Discharge

Discharge from the Ogallala aquifer is primarily through direct evapotranspiration, outflow to streams and rivers, outflow to adjacent and hydrologically connected aquifers, and well withdrawals (Filipovic, 2004 and 2011; Water Rights, 2022d and 2022e). Currently, there are 171 water rights/permits authorized to withdraw water and 4 future use permits reserving 2,233 ac-ft/yr from the entirety of the Ogallala aquifer (Water Rights, 2022d). Water Right Nos. 475-2 and 1114-2 and Water Permit Nos. 2678-2 and 2679-2 are not currently in use because the land authorized for irrigation has been sold to a nearby tribe. Thus, there are only 167 currently active water rights/permits plus the 4 future use permits. From the main body of the Ogallala aquifer, of which the aquifers for Application Nos. 2833-2 and 2834-2 are hydrologic extensions, there are 149 water rights/permits (135 irrigation and 14 non-irrigation) along with 2 future use permits (1,586 ac-ft/yr) authorized to withdraw or reserve water from the main body of the Ogallala aquifer plus Water Right No. 1260-2 for the previously mentioned reasons (Water Rights, 2022d). Table 2 displays the estimated average annual water use by non-irrigation water rights/permits and the amount of water reserved by future use permits. Non-irrigation water rights/permits that are only limited by diversion rate are assumed to pump 60% of the time at their permitted diversion rate. Water

rights/permits with a permitted volume are assumed to pump their maximum permitted volume. Future use permits are assumed to be fully developable.

Table 2- Estimated average annual use from the main body of the Ogallala aquifer by non-irrigation water rights/permits and future use permits (Water Rights, 2022d)

Permit No.	Name	County	Status	Type	CFS	Estimated Annual Use (ac-ft/yr)	Permitted Annual Vol. (ac-ft/yr)
1038-2	CITY OF WINNER	TRIPP	LC	MUN	0.87	377.9	
1285-2	CITY OF WINNER	TRIPP	LC	MUN	0.67	291.0	
1286-2	CITY OF WINNER	TRIPP	LC	MUN	0.72	312.8	
1416-2	CITY OF WINNER	TRIPP	LC	MUN	0.69	299.7	
1942-2	LITTAU & MASSA ET AL	TRIPP	LC	DOM	0.09	39.1	
2293-2	TRIPP COUNTY WATER USER DISTRICT	TRIPP	LC	RWS	3.88	1685.4	
2455-2	MARTIN J VANDERPOEG	BENNETT	LC	FWP	0.045	19.5	
2505-2	LAKEVIEW CHRISTIAN REFORM	TODD	LC	INS	0.033	14.3	
2515-2	TRIPP COUNTY WATER USER DISTRICT	TRIPP	LC	RWS	2.68		1200
2621-2	TUTHILL COMMUNITY PRESBYTERIAN CHURCH	BENNETT	LC	INS	0.02	8.7	
2804-2	DOUGHERTY CATTLE COMPANY INC	TRIPP	PE	COM	0.13		16.12
521-2	CITY OF WINNER	TRIPP	LC	MUN	4.11	1785.3	
632-2	CITY OF COLOME	TRIPP	LC	MUN	0.22	95.6	
976-2	CITY OF COLOME	TRIPP	LC	MUN	0.33	143.3	
551-2	CITY OF WINNER	TRIPP	FU	MUN	2.44		1586
882-2	CITY OF WINNER	TRIPP	FU	MUN	n/a		0
Total						7874.8	

LC= Water Right, FU= Future Use Permit, MUN= Municipal, DOM= Domestic, RWS= Rural Water System, FWP= Fish and Wildlife Propagation, INS= Institutional

The historic reported water use from the main body of the Ogallala aquifer plus the reported irrigation use by Water Right No. 1260-2 is shown in Table 3. The average annual reported irrigation pumpage from the main body of the Ogallala aquifer plus Water Right No. 1260-2 is 18,994.7 ac-ft/yr. However, from 1982 through 2012 and into 2013 the number of irrigation permits was relatively stable, but due to drought conditions in 2012, many irrigation permits applications were submitted and subsequently approved. To more accurately account for this change in the number of permits, it is more appropriate to consider the average irrigation pumpage from 2012 to present, which is 23,253.5 ac-ft/yr.

Table 3- Annual reported irrigation use from the main body of the Ogallala aquifer plus irrigation use by Water Right No. 1260-2 (Water Rights, 2022b)

Year	No. of Permits Reporting	Reported Pumpage (acre-feet)	Year	No. of Permits Reporting	Reported Pumpage (acre-feet)
1982	92	9,303.0	2004	91	23,868.0
1983	99	10,172.0	2005	98	20,054.7
1984	107	13,298.4	2006	106	25,657.1
1985	106	18,586.5	2007	105	24,010.9
1986	102	13,000.6	2008	101	24,483.6
1987	101	12,397.0	2009	100	22,173.6
1988	100	16,199.3	2010	99	21,209.1
1989	101	27,326.4	2011	100	15,235.7
1990	104	16,581.6	2012	103	33,144.5
1991	105	16,074.5	2013	104	26,492.3
1992	105	12,051.0	2014	104	22,126.7
1993	103	11,151.9	2015	102	23,993.9
1994	105	16,698.6	2016	104	23,297.6
1995	104	14,252.8	2017	103	27,319.3
1996	107	21,168.0	2018	106	19,384.3
1997	108	18,661.0	2019	107	11,464.1
1998	106	13,857.9	2020	105	22,058.8
1999	107	13,709.5	MIN	91.0	9,303.0
2000	108	16,119.0	MAX	108.0	33,144.5
2001	107	17,989.9	AVG	103.1	18,994.7
2002	102	24,179.8	AVG 2012-2020	104.2	23,253.5
2003	102	22,039.1			

There are domestic wells completed into the Ogallala aquifer that do not require a water right/permit, nor are required to report annual pumpage (Water Rights, 2021e). The introduction and expansions of rural water systems has caused some of the domestic wells to no longer be in use or to be used as a primary water source. Furthermore, domestic wells have a limited withdrawal rate allowed under South Dakota water law. Therefore, for the above listed reasons, withdrawal by domestic wells is not considered a significant portion of the hydrologic budget for the Ogallala aquifer.

Data was compiled for selected irrigation and municipal wells operated by the Rosebud Sioux Tribe (Valseth and Driscoll, 2020). However, it is likely not all municipal and irrigation wells that are operated by the tribe or on tribal lands were included. Furthermore, many of the selected wells that were reviewed do not include well depth or aquifer assignment to determine if the wells are completed into the Ogallala aquifer. The data does not include an estimated annual volume pumped by each well. The data available is only estimated mean production (pumping

rate). Therefore, there is not sufficient information available to make a reasonably accurate estimate of average annual water use from these wells.

Hydrologic Budget

The estimated average annual recharge to the main body of the Ogallala aquifer ranges from approximately 109,000 to 285,000 ac-ft/yr. The estimated average annual withdrawals from the main body of the Ogallala aquifer is 31,128.3ac-ft/yr (non-irrigation: 7,874.8; irrigation: 23,253.5). There is one pending application, besides the two covered in this report. Permit Application No. 2836-2 proposes to irrigate 135 acres. These two applications combined propose to irrigate 260 acres. Assuming an application rate of one foot of water per permitted acres, these three proposed applications would pump 395 ac-ft/yr on average. The estimated average annual pumping plus likely pumping by proposed applications is still much less than the estimated average annual recharge. Therefore, there is a reasonable probability unappropriated water is available for this proposed appropriation.

Observation Well Data:

Administrative Rule of South Dakota Section 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements in addition to other data to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge of the aquifer. The Water Rights Program maintains 76 observation wells completed into the Ogallala aquifer of which 69 are completed into the main body of the aquifer (Water Rights, 2022c).

There are six Ogallala aquifer observation wells within approximately five miles of the proposed diversion points for Application Nos. 2833-2 and 2834-2 as shown in Figure 8. Figures 2 through 7 show the observation well hydrographs. These 6 hydrographs are representative of the other 63 hydrographs for observation wells completed into the main body of the Ogallala aquifer (Water Rights, 2022c). In general, the observation well hydrographs show stable to rising water levels, except in areas of significant recent development such as Bennett County. In the areas of significant recent development, some hydrographs show a slight recent decline in water levels. This is representative of the potentiometric surface of the aquifer equilibrating to new and increased pumping and not indicative of over appropriation.

The hydrographs document the water level in the aquifer rises during wetter periods and slowly declines during drier periods. Furthermore, the effects of local pumping on the water level in the observation wells recover to pre-pumping season levels. This recovery and following of the climatic wet/dry cycle means that natural conditions, recharge to and natural discharge from the aquifer, govern the long term changes in water level of the aquifer. Recognizing that recharge to and natural discharge from an aquifer can be captured for pumping, the observation well data demonstrates there is unappropriated water available for these proposed appropriations. The observation well data agrees with the hydrologic budget data.

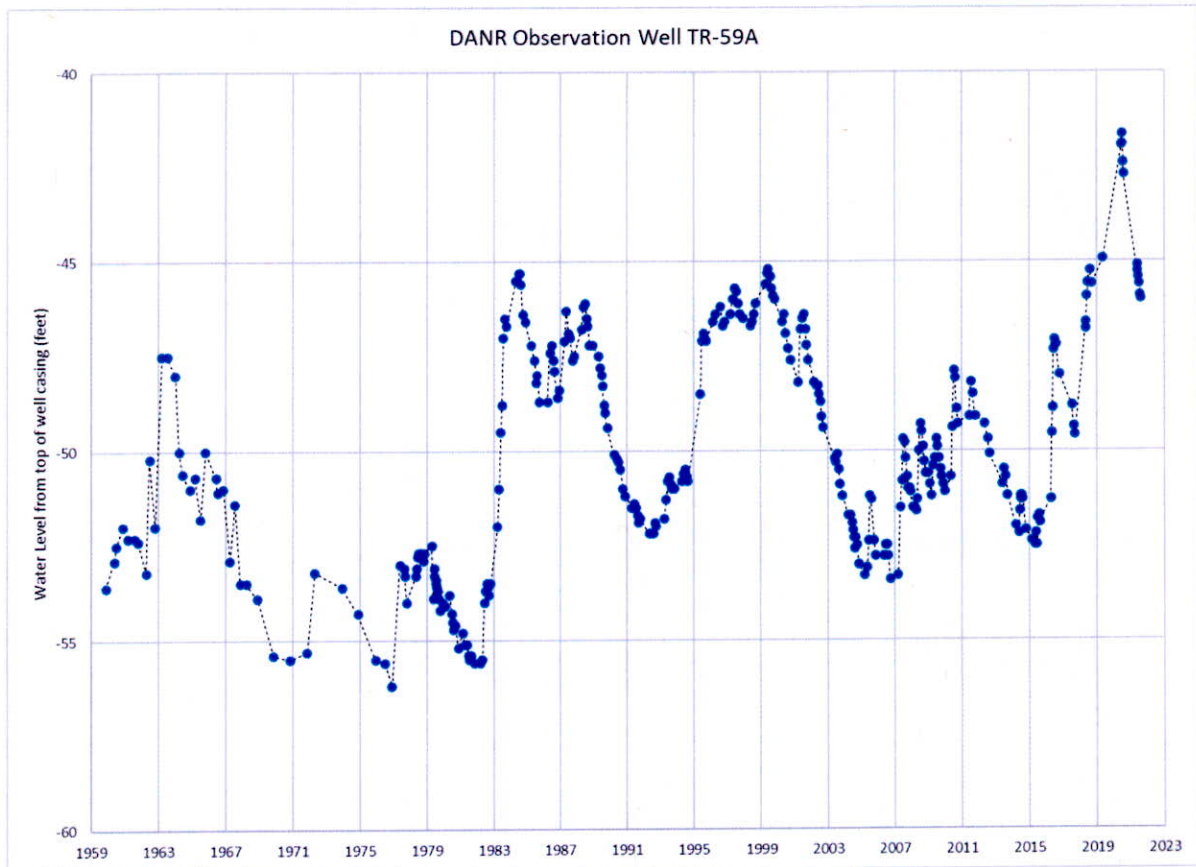


Figure 2- Hydrograph for observation well TR-59A (Water Rights, 2022c)

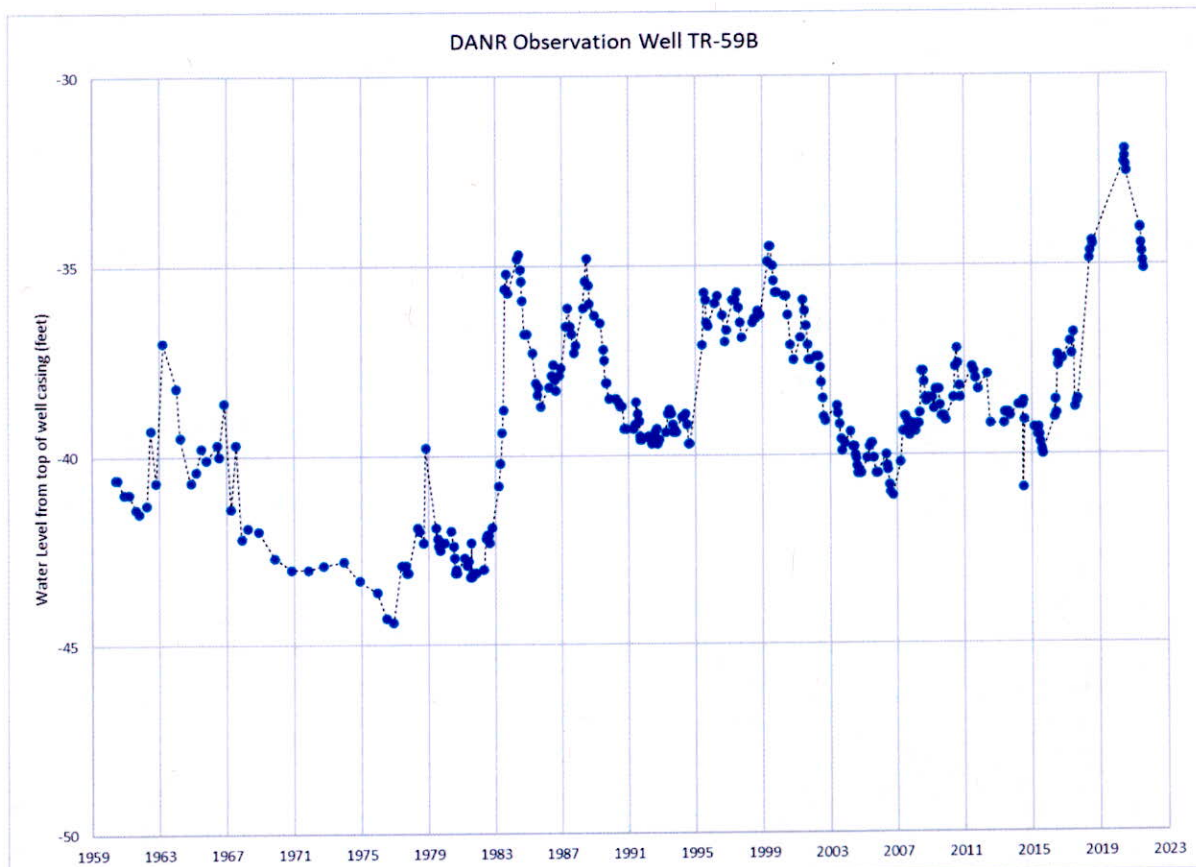


Figure 3- Hydrograph for observation well TR-59B (Water Rights, 2022c)

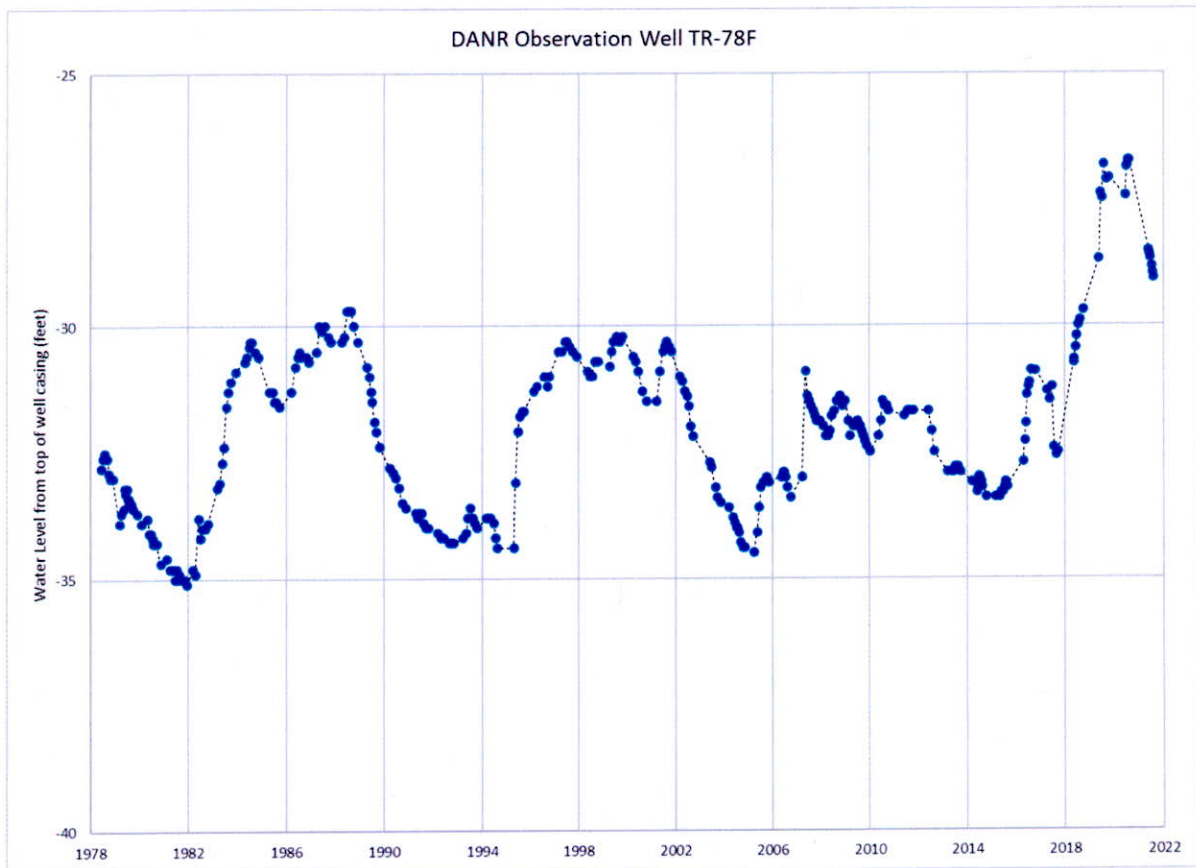


Figure 4- Hydrograph for observation well TR-78F (Water Rights, 2022c)

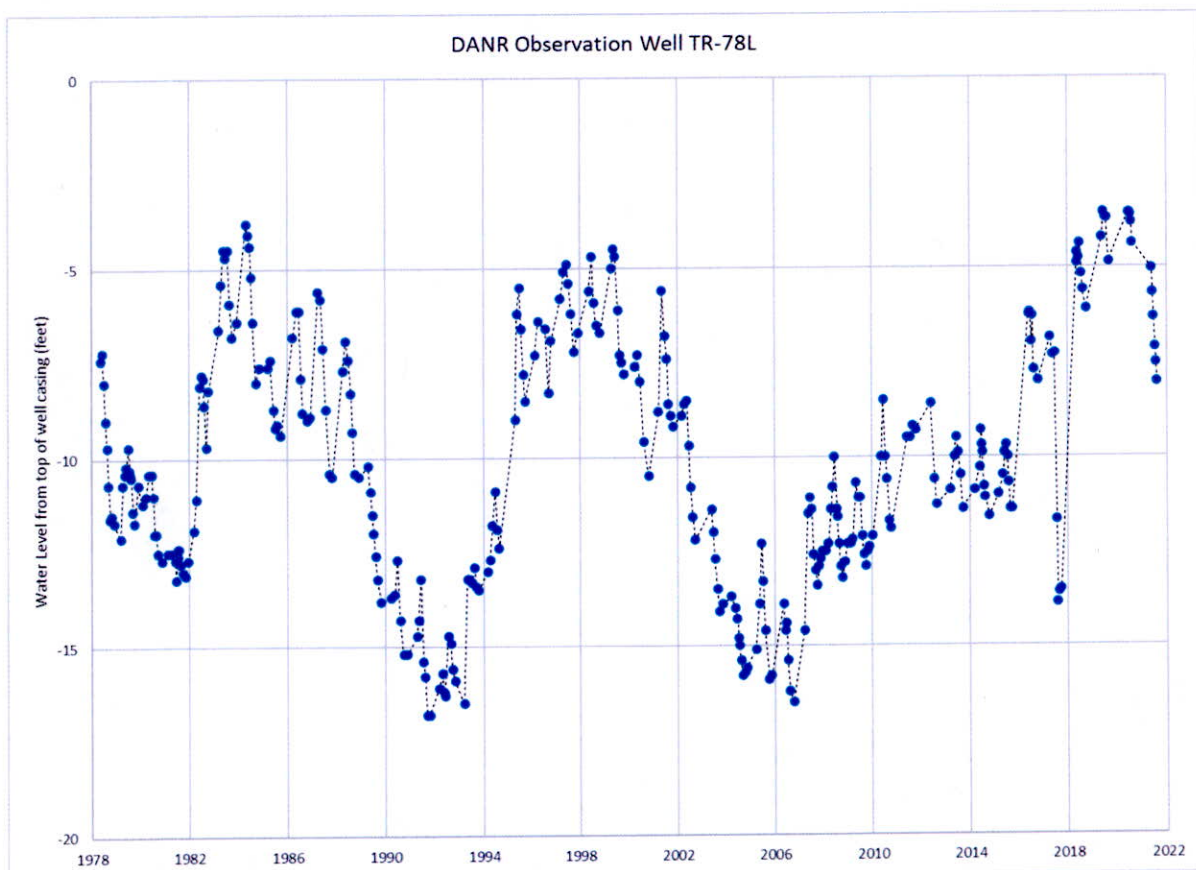


Figure 5- Hydrograph for observation well TR-78L (Water Rights, 2022c)

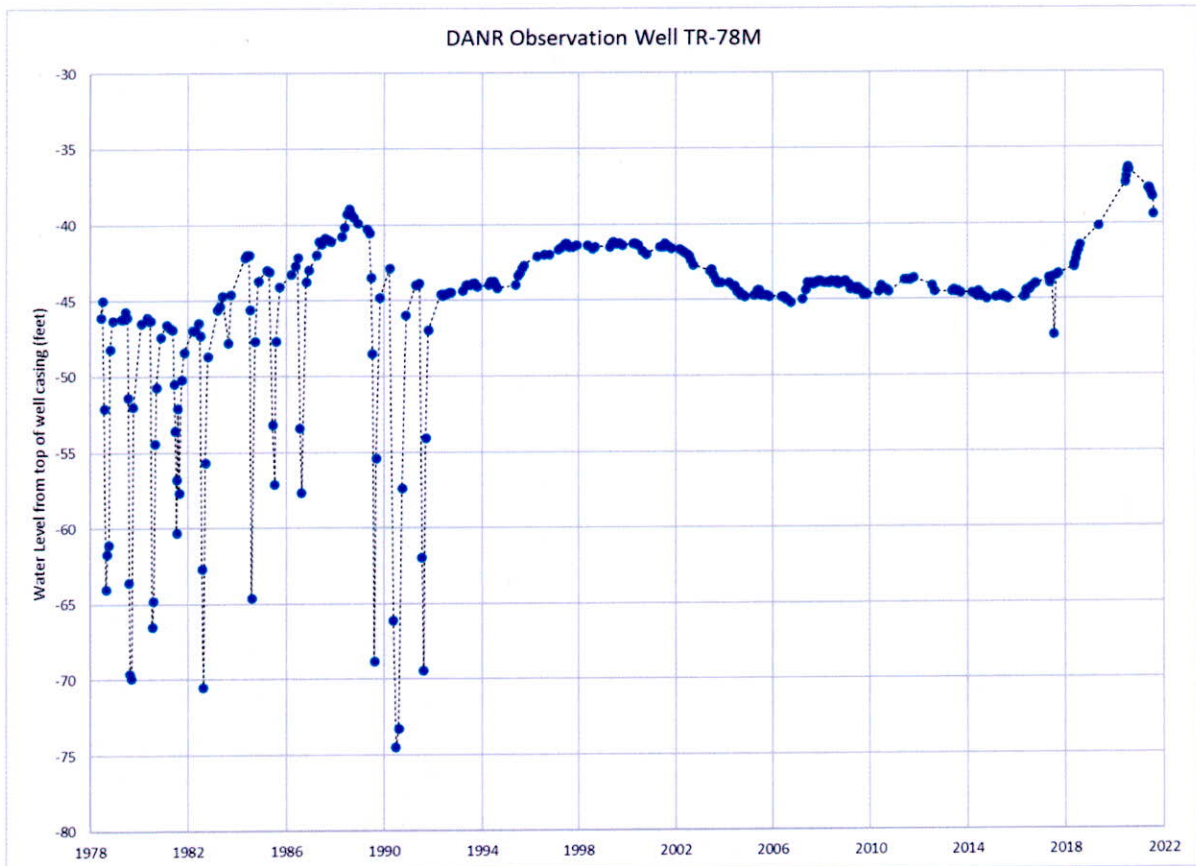


Figure 6- Hydrograph for observation well TR-78M (Water Rights, 2022c)

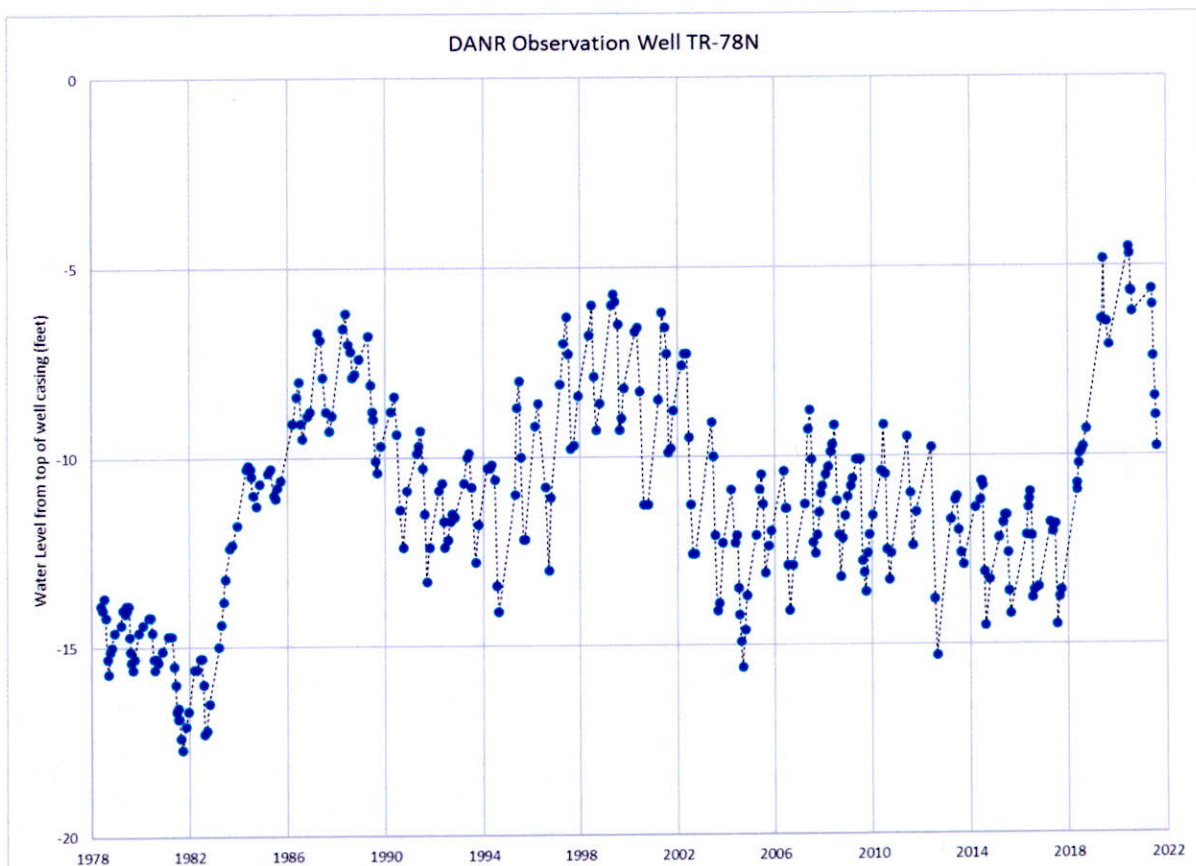


Figure 7- Hydrograph for observation well TR-78N (Water Rights, 2022c
Permit Application Nos. 2833-2 and 2834-2

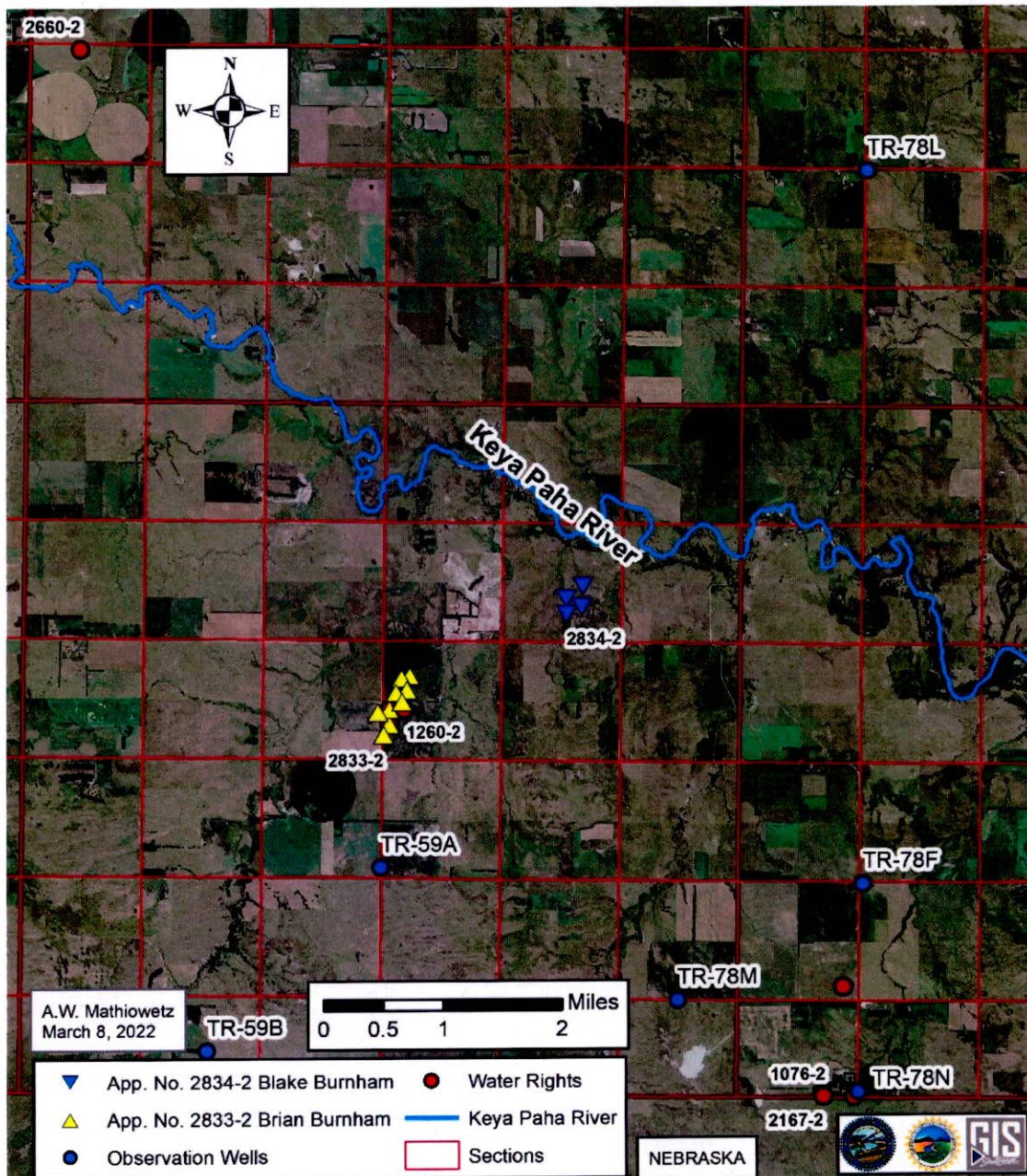


Figure 8- Map of Ogallala aquifer water rights/permits (Water Rights, 2022d), observation wells (Water Rights, 2022c) and the proposed diversion points for Permit Application Nos. 2833-2 and 2834-2

Table 4- Water rights/permits shown in Figure 8 (Water Rights, 2022d)

Permit No.	Name	County	Status	Use	CFS	Acres
1076-2	MARLENE SLOAN	TR	LC	IRR	1.63	114
1260-2	BRIAN BURNHAM	TR	LC	IRR	1.87	131
2167-2	DALE HEESE	TR	LC	IRR	1.94	136
2660-2	MISSION FARMS INC	TD	LC	IRR	1.78	135
TR= Tripp, TD= Todd, LC= Water Right, IRR= Irrigation						

POTENTIAL FOR UNLAWFUL IMPAIRMENT OF EXISTING WATER RIGHTS:

The nearest appropriative wells completed into the Quaternary Eolian, the Quaternary Terrace, or the Ogallala aquifer to any of the well locations proposed by Application Nos. 2833-2 and 2834-2 are authorized by Water Right No. 1260-2 which is to serve as a backup supply to Application No. 2833-2, if approved, and is held by the applicant (Water Rights, 2022d). The next nearest appropriative well is located approximately 4.6 miles and 3.9 miles to the southeast of the diversion points proposed by Application No. 2833-2 and 2834-2, respectively (Water Rights, 2022d). A map of the area is shown in Figure 8.

The nearest domestic well on file with the Water Rights Program to any of the diversion points proposed by Application Nos. 2833-2 and 2834-2 that are not held by the applicants are approximately 1.8 miles east or south from Application No. 2833-2 or approximately 0.5 miles southwest of Application No. 2834-2 (Water Rights, 2022e). There may be other domestic wells completed into the Quaternary Eolian, the Quaternary Terrace, or the Ogallala aquifer in the vicinity of these applications that are not on file with the Water Rights Program. There are no well interference complaints from any aquifer in Tripp County (Water Rights, 2022a). There was one unsubstantiated complaint regarding well interference from wells completed into the Ogallala aquifer in Bennett County (Water Rights, 2022a).

In general and in this area, the Ogallala aquifer is under unconfined conditions and both the Quaternary Eolian and Quaternary Terrace are locally unconfined (Water Rights, 2022d and 2022e). At the proposed diversion points for both applicants, the static water level is expected to be between 20 and 30 feet below grade with a saturated thickness of 20 to 40 feet (Beck, 2022; Water Rights, 2022c, 2022d and 2022e). That would allow a pump to be placed at least 20 feet into the saturated aquifer, in most cases, as required by Administrative Rule of South Dakota (ARSD) 74:02:04:20(6) to qualify as an adequate well. The Water Management Board has recognized in the past that to place water to maximum beneficial use some drawdown may occur. In order to protect domestic users, the Water Management Board defined an "adversely impacted domestic well" in ARSD 74:02:04:20(7) as:

a well in which the pump intake was set at least 20 feet below the top of the aquifer at the time of construction or, if the aquifer is less than 20 feet thick, is as near to the bottom of the aquifer as is practical and the water level of the aquifer has declined to a level that the pump will no longer deliver sufficient water for the well owner's needs.

Observation well TR-78N is within 0.5 miles of two appropriative irrigation wells (see Figure 7). The hydrograph for the observation wells shows a total variance of approximately 13 feet of the entire period of record despite being in very close proximity to multiple high pumping rate wells. Any drawdown created from pumping either of these proposed diversions is not expected to cause unlawful impairment on existing water rights with adequate wells or adequate domestic wells. This is due to the unconfined nature of the aquifer, the distance between appropriative wells, and the relatively limited amount of drawdown in the aquifer by high pumping rate wells as shown by the hydrograph for TR-78N. Therefore, there is a reasonable probability these proposed diversions will not unlawfully impair existing users appropriative or domestic users that have adequate wells.

CONCLUSIONS:

1. Water Permit Application No. 2833-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cfs from up to 9 wells to be completed into the Quaternary Eolian aquifer including the wells currently authorized by Water Right No. 1260-2.
2. The particular portion of the Quaternary Eolian aquifer Application No. 2833-2 proposes to use is acting as an extension of the Ogallala aquifer in this area and has been treated as a portion of the Ogallala aquifer in this report.
3. Water Permit Application No. 2834-2 proposes to irrigate 130 acres at a maximum instantaneous diversion rate of 1.85 cfs from up to 4 wells to be completed into the Quaternary Terrace aquifer.
4. The particular portion of the Quaternary Terrace aquifer Application No. 2834-2 proposes to use is acting as an extension of the Ogallala aquifer in this area and has been treated as a portion of the Ogallala aquifer in this report.
5. Based on the hydrologic budget and observation well data for the main body of the Ogallala aquifer, there is a reasonable probability of unappropriated water being available for Application Nos. 2833-2 and 2834-2.
6. There is a reasonable probability development of Application Nos. 2833-2 and 2834-2 will not unlawfully impair existing appropriated users with adequate wells or adequate domestic wells.



Adam Mathiowetz, PE
SD DANR-Water Rights Program

REFERENCES:

- Beck, T. 2022. *Personal Communication*. SD Licensed Well Driller No. 377 – Tonny Beck of Beck's Well & Irrigation, Inc. Phone call January 16, 2022.
- Cederberg, I. 2021. Report to the Chief Engineer on Water Permit Application No. 2822-2 Johnson Land & Cattle LLC c/o Adam Johnson. DANR-Water Rights Program. Pierre, South Dakota.
- Filipovic, D. 2004. Hydrogeologic Assessment of the High Plains Aquifer in Tripp and Gregory Counties, South Dakota. Open File Report 90-UR. SD DANR-Geological Survey. Vermillion, South Dakota.
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- Water Rights. 2022a. County Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2022b. Irrigation Questionnaire Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2022c. Observation Well Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2022d. Water Right/Permit Files. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.
- Water Rights. 2022e. Well Completion Reports. SD DANR-Water Rights Program, Joe Foss Bldg., Pierre, South Dakota.



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MAR 25 2022

OFFICE OF
WATER

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Comment

Concerning Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. Filing a comment does NOT make the commenter a party of record to, or a participant in, any hearing that may be held concerning this application. Your comment will be provided to the Water Management Board and become part of the public record.

Comments concerning this application:

Dear Sr

I am writing this as a public concern that by pumping that much surface water that it would be detrimental to our wells for private and livestock uses

We are going into a second year of drought which has taken its toll on our local water supplies i would hope you would reconsider your decision on approval of this for Blake or Brian

Thanks for reading my comment

Commenter's name and address:

First Name: Aaron Last Name: Davis

Address: 30113 313th ave

City: Winner State: S.D Zip: 57580

Note. This comment needs to be submitted no later than the deadline date provided in the public notice. The mailing address is provided above, send to "Attention - Water Rights Program" or send via email to DANRmail@state.sd.us.

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Application No. 2833-2

APR 1 1988

Commenter's Name Aaron Davis

NO. 201110
880401

Any additional comments:



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MAR 28 2022

WATER RIGHTS
PROGRAM

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Barnham

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

The lowering of water in our wells at the house. The loss of water flowing in our creek. Specifically cottonwood creek.

List the reasons for your opposition to this application:

I am not writing this petition to stop my neighbor from improving their property. I am writing because of my concern of the depletion of our ground water.

The ~~creek~~ cottonwood creek which is our only source of water in our pasture, has went from 1ft. deep to 1-2 in deep in the last few years. I am afraid that further ground water depletion will cause it to dry up.

The water in our house well could also be affected. There are places in our township already have problems with getting water. I don't want that to be my future.

Drilling that many wells at one time will deplete ground water; which is the most basic of needs. Once ground water is gone, will we ever get it back? What I have heard, probably not.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Susan Last Name: Davis

Mailing Address: 31263 - 302nd St.

City: Millboro State: SD Zip: 57580

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.



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MAR 28 2022

WATER RIGHTS
PROGRAM

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

I'm petitioning the approval of Application 2833-2 for the following reasons. Firstly, it would decrease or even dry up the current aquifer that we currently use for livestock and personal consumption. It is very possible to run our pastures (which are very close to) out of the required amount of water to maintain our livestock.

List the reasons for your opposition to this application:

As stated above I run livestock who are maintained by the use of wells in the vicinity. It is highly possible for those wells to run dry from over pumping of the aquifer. It is even more prevalent on a drought or dry year. Water is one of our most treasured natural resources, and it needs to be sustained. Another big issue is the well we get our drinking water from. It is in the vicinity and could run low from the over use of irrigation systems. We need the water to live and for our pets to survive. Thank you for your time and consideration for the petition of this application.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Alex Last Name: Davis

Mailing Address: 30113 313th Ave.

City: Winnier State: SD Zip: 57580

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.



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MAR 28 2022

WATER RIGHTS
PROGRAM

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

Depletion of water levels in our Private wells
And Dams

List the reasons for your opposition to this application:

My concern is the use of that much water from said
Aquifer will result in lower water levels for our
personal and livestock wells and dams. I don't think
doing this will benefit anyone but the ones developing it.
We are in the second year of drought and it doesn't seem
very responsible to allow it. There are several wells in our area
that have barely enough water for them to be used very
much.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Aaron Last Name: Davis
Mailing Address: 30113 313th Ave
City: Winnier State: S.D. Zip: 57580

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.



RECEIVED

MAR 28 2022

WATER RIGHTS
PROGRAM

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

The approval of this application would cause unique injury to the current & future use of water on my property. With insufficient water, our cattle operation & land value would be drastically affected, along with the water supply to our home.

List the reasons for your opposition to this application:

Approval of this application will drastically affect water levels in existing wells & is not in the public's interest. This will affect not only mine, but surrounding households, cattle operations, crops & land values. This would be a misuse of a natural resource with lasting effects on property surrounding the area. The public needs to be considered when approving such application.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Amy Last Name: Davis

Mailing Address: 30113 913th Ave

City: Winn State: SD Zip: 57580

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.



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MAR 28 2022

WATER RIGHTS
PROGRAM

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

The recommendation by the Chief Engineer to approve Application No. 2833-2 does not take into consideration the current and future needs of surrounding acres owned by my families Trust (see definition in next section) that will require additional water supply needs which will impact Crop levels, sales and other impacts including the potential (probably likely) loss of value of the property or insufficient water levels for a cattle operation should there be increased drought conditions. Such impacts would have a material financial adverse impact of the Trust and directly correlated to the increased number of wells and water usage in this application if allowed to be approved.

I strongly oppose this application and the recommendation, therein. Notwithstanding other injuries, the potential loss in value of the Trust's property of acres in proximity to the wells is by itself enough injury to oppose this application.

List the reasons for your opposition to this application:

I am the Trustee of the "Vernon R. Herrmann and Marilyn S. Herrmann Irrevocable Trust of 2019" (the Trust). The Trust owns land in Tripp County South Dakota, including land that would be impacted by this application. The usage of this Trust land will likely be significantly different for either the party leasing the land from the Trust or for a future owner of the land. Application No. 2833-2 (the "Application") will materially injure the Trust. Among other items, I do not believe the Chief Engineer placed sufficient consideration on current or future needs and values of surrounding property's including my Trust, among other items. With this substantial increase in wells and water usage, there appears to be no assurance that should one of my Trust land sections require additional wells, that our application would be approved due to this the requirements of a detailed review including a comparison of average annual recharge and average annual withdrawals is required for these applications, among other items. In addition, by any means, 9 wells on 130 acres is significant and could even impact current water uses on the Trust land should a significant drought occur which also would also materially injure the Trust. The Notice that was published in the Winner Advocate, mentions reasons why the Application should be approved but does not mention that it could impact "FUTURE" levels of "unappropriated water." It also mentions that approval is in the "public interest". I would ask whose "public interest" other than the Burnham property? What about the "public interest" of land owners such as the land in my Trust which has been owned by my family for decades.

To conclude, the Application requires that I allege that the Application will cause injury to the Trust that is unique from any injury suffered by the public in general. The Items I discussed above clearly show that there could be an immediate loss in value of the Trust land due to the significant higher usage of a scarce resource (water). This immediate injury along with the other injuries mentioned above and potentially other injuries once more information is obtained by my legal counsel, should be sufficient to deny the Application as it is currently written.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Kevin Last Name: Herrmann
Mailing Address: 13565 Larimore Ave
City: Omaha State: NE Zip: 68164

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.



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MAR 28 2022

WATER RIGHTS
PROGRAM

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

Depletion of water available for well at my home place for house & domestic use & for livestock. Also reduction in available water for livestock in Lost Creek & stream in RS-2283.

List the reasons for your opposition to this application:

This permit will take water from aquifers that supply my home well that is essential for home use & livestock water. Chief Engineer states that "existing domestic water uses & water rights will NOT be unlawfully impaired." Do you guarantee that? We have never had a shortage of water in our well in the past, & stream flows have been sufficient for livestock use - but

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Kaylee Kollmer Last Name: Condon

Mailing Address: 31143 299th St,

City: Millboro State: SD Zip: 57580-6114

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

Application No. 2833-2

Petitioner's Name ~~Brian B~~ Kaycee Kellmar-Condon

Any additional description of the unique injury or reasons for opposing this application:

taking this amount of water for irrigation
will change that. We all need water
for home & livestock use, & that comes
first! over irrigation, or other uses.



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MAR 28 2022

WATER RIGHTS
PROGRAM

DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

Depletion of water available for my well for household & domestic use & for livestock. Also reduction of stream flow in Lost Creek - needed for livestock - as well as a small stream in NE 1/4 of NE 1/4 of sec 10-95-77 (RS-2283) - the ONLY source of water in that parcel.

List the reasons for your opposition to this application:

Taking 1.85 c.u.ft. per second from 9 wells will deplete the aquifers that supply my well that I need for my domestic & livestock use. The chief engineer has stated that existing domestic water uses & water rights will not be unlawfully impaired. If my well, or creeks, go dry - will the application be revoked? At that point - it may be too late for the aquifer to recharge! I need water for my household domestic & livestock use! This irrigation may also affect the flows in Lost Creek & in RS-2283 - that I need for livestock!! see next page →

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Marie Last Name: Condon
Mailing Address: 31143 299th St.
City: Millbrae State: SD Zip: 57580-6114

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

Application No. 2833-2

Petitioner's Name ~~Brian Burnham~~ Marie Condon

Any additional description of the unique injury or reasons for opposing this application:

The "test wells" (monitor wells) in my area are all located south of my place - so would not indicate what is going on at my place.

My concern is not only for me, but for my neighbors as well, & for future generations or future landowners.

We all need water!



DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

The lowering of water level in our house well. I am afraid Cottonwood Creek will dry up and I cannot water our livestock.

List the reasons for your opposition to this application:

I use well water for my house and garden. I also use it to water livestock. Any change in ground water could affect my well. The drilling of that many wells and pumping that amount of water could affect my well by lowering ground water levels. Ground water is for everyone not just one person to take the lions' share and everyone else go without.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Charles Last Name: Davis
Mailing Address: 31263 - 302nd St
City: Millboro State: SD Zip: 57580

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

March 31, 2022

NOTICE OF HEARING

TO: Brian Burnham Petitioners
31166 300th St (see attached list dated March 31, 2022)
Winner SD 57580

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

FROM: Eric Gronlund, Chief Engineer
SD DANR, Water Rights Program

SUBJECT: Notice of Hearing on Water Permit Application No. 2833-2, Brian Burnham

A petition has been filed in the matter of Water Permit Application No. 2833-2 in response to the Notice of Application published in the Winner Advocate and Huron Daily Plainsman on March 23, 2022. This notice schedules a hearing on Application No. 2833-2 before the South Dakota Water Management Board.

Water Permit Application No. 2833-2 proposes to appropriate 1.85 cubic feet of water per second from up to 9 wells to be completed into the Quaternary Eolian Aquifer (approximately 75 feet deep) located in the W 1/2 section 15; and NE 1/4 SE 1/4 section 16; all for irrigation of 130 acres in the SE 1/4 section 16; all in T95N-R77W. Two of the 9 wells are existing wells covered by Water Right No. 1260-2 for irrigation of the SW1/4 section 15-T95N-R77W. The applicant requests that the 2 existing wells and the 7 proposed wells be used to irrigate all the acreage in the SE1/4 section 16 and SW1/4 section 15; all in T95N-R77W.

Pursuant to SDCL 46-2A-2, the Chief Engineer recommends approval of Application No. 2833-2 with qualifications because 1) unappropriated water is available, 2) existing domestic water uses and water rights will not be unlawfully impaired, 3) it is a beneficial use of water, and 4) it is in the public interest as it pertains to matters within the regulatory authority of the Water Management Board.

The Water Management Board will conduct a hearing to consider Application No. 2833-2 at 1:00 PM (Central Time), on Wednesday, May 4, 2022, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda. Notice will be provided if there is a change in the time or date of the hearing.

The Chief Engineer's recommendation is not final or binding upon the Board. The Board is authorized to 1) approve, 2) approve with qualifications, 3) defer, or 4) deny the application after it reaches a conclusion based on the facts presented at the public hearing.

The May 4, 2022 hearing date will be automatically delayed for at least 20 days upon written request to the Chief Engineer from the applicant or any person who has filed a petition opposing the application. A request for an automatic delay must be filed by **April 11, 2022**. The Chief Engineer's address is "Water Rights Program, Foss Building, 523 E Capitol Ave, Pierre SD 57501." If an automatic delay is requested, the hearing will be rescheduled for a future Board meeting and personal notice will be provided to the applicant and all petitioners regarding the time, date, and location.

The hearing is an adversary proceeding and any party has the right to be present at the hearing and may be represented by legal counsel. These and other due process rights will be forfeited if they are not exercised at the hearing. Decisions of the Board may be appealed to the Circuit Court and State Supreme Court as provided by law.

Enclosed is a copy of the report, recommendation, affidavit of publication, and the petitions filed in the matter of Water Permit Application No. 2833-2. State law directs the Chief Engineer to provide Water Management Board members with a copy of all pleadings including petitions for each proceeding. The information being provided to you is also being sent to the Board members in advance of the hearing. Notices, orders, and other pleadings filed in this matter are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>. In addition, enclosed are two documents intended to acquaint parties with the hearing process entitled "Procedure for Hearings before the Water Management Board" and "Summary of South Dakota Water Laws and Rules." If you intend to participate in the hearing, you are encouraged to review these documents prior to the hearing.

Contact Ron Duvall at the above Chief Engineer's address to request a copy of the staff report, recommendation, application, or other information related to the application. Notice is given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Department of Agriculture and Natural Resources at least 48 hours before the hearing if you have a disability for which special arrangements must be made at the hearing. The telephone number for making arrangements is (605) 773-3352.

Under SDCL 1-26-17(7) notices must state that "if the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten days after service of a notice of hearing issued pursuant to SDCL 1-26-17." This is a Notice of Hearing, service is being provided by direct mail to you, and the applicable date to give notice to the Chief Engineer is April 11, 2022. However, since this particular matter is a water permit application and not a monetary controversy in excess of \$2,500.00 or termination of a property right, the Chief Engineer disputes the applicability of this provision and maintains that the hearing must be conducted by the Board.

As applicable, the following provides the legal authority and jurisdiction under which the hearing will be held and the particular statutes and rules pertaining to this application: SDCL 1-26-16 thru 1-26-28; SDCL 46-1-1 thru 46-1-9, 46-1-13 thru 46-1-16; 46-2-3.1, 46-2-9, 46-2-11, 46-2-17; 46-2A-1 thru 46-2A-12, 46-2A-14, 46-2A-15, 46-2A-20, 46-2A-21, 46-2A-23; 46-5-1.1, 46-5-2 thru 46-5-26, 46-5-30.2 thru 46-5-30.4, 46-5-31 46-5-32 thru 46-5-34.1, 46-5-38 thru 46-5-39, 46-5-46, 46-5-47, 46-5-49; 46-6-1 thru 46-6-3.1, 46-6-6.1, 46-6-10, 46-6-13, 46-6-14, 46-6-21, 46-6-26; Board Rules ARSD 74:02:01:01 thru 74:02:01:24.02 and ARSD Chapter 74:02:04.

Questions regarding the hearing process may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

Petitioner List
Water Permit Application No. 2833-2, Brian Burnham
March 31, 2022

PETITIONERS

Susan Davis
31263 302nd St
Millboro SD 57580

Aaron Davis
30113 313th Ave
Winner SD 57580

Alex Davis
30113 313th Ave
Winner SD 57580

Amy Davis
30113 313th Ave
Winner SD 57580

Marie Condon
31143 299th St
Millboro SD 57580-6114

KayCee Kollmar-Condon
31143 299th St
Millboro SD 57580-6114

Kevin Herrmann
13565 Larimore Ave
Omaha NE 68164

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated March 31, 2022, with attachments regarding Water Permit Application No. 2833-2 – Brian Burnham, was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on March 31, 2022.

Brian Burnham
31166 300th St
Winner SD 57580

And Petitioners as follows:

Susan Davis
31263 302nd St
Millboro SD 57580

Alex Davis
30113 313th Ave
Winner SD 57580

Marie Condon
31143 299th St
Millboro SD 57580-6114

Aaron Davis
30113 313th Ave
Winner SD 57580

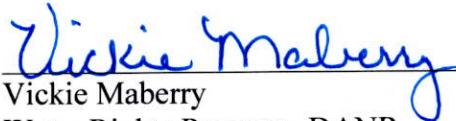
Amy Davis
30113 313th Ave
Winner SD 57580

KayCee Kollmar-Condon
31143 299th St
Millboro SD 57580-6114

Kevin Herrmann
13565 Larimore Ave
Omaha NE 68164

Above also Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501



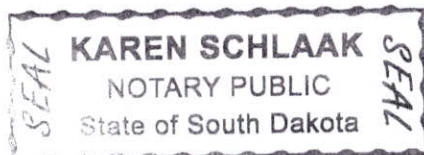
Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 31st day of March, 2022.



Karen Schlaak
Notary Public
My Commission expires April 1, 2025





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APR 01 2022

WATER RIGHTS
PROGRAM

*via
email
RJO*

**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required.

Describe the unique injury approval of this application will have upon you:

I live in the town of Millboro, we have a limited source of water in Millboro. We will be limited in quantity for personal use if that amount of water is extracted from surface wells. That extraction of water could ultimately give us dry wells and we would not have surface water to use for household purposes.

List the reasons for your opposition to this application:

One reason I oppose the drilling of the wells is that it could deplete all surface water that I need to drink as well as sustain my personal property needs. I also need water for my animals to drink and water to sustain my household.

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Jody Last Name: Soles

Mailing Address: 29861 310th Avenue

City: Millboro State: South Dakota Zip: 57580

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

Application No. _____

Petitioner's Name _____

13V1037

10/1/04

10/1/04

Any additional description of the unique injury or reasons for opposing this application:



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APR 04 2022

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**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

Petition

Opposing Application for a Water Right Permit

Application No. 2833-2 Name of Applicant Brian Burnham

The Application No. and applicant's name can be found in the public notice at <https://danr.sd.gov/public>.

Note. According to South Dakota Codified Law section 46-2A-4(5), all the following information is required

Describe the unique injury approval of this application will have upon you:

As a local landowner and livestock producer, my biggest concern of injury is economic damage as a result of excessive water consumption from the applicant especially with the installation of 9 wells for 130 acre system. I find it highly unlikely there is sufficient hydrological budget to meet the needs of 9 wells plus existing domestic wells in the area that feed off of the water deposits.

List the reasons for your opposition to this application:

My primary reason for opposition is the current drought conditions in the area (D2 "Severe" as of 3/22/22, U.S. Drought Monitor) and drought forecasts for this summer (Persistent Drought Conditions, NOAA Climate Prediction Center). With drought conditions my primary concern is a potential negative impact on local wells in both a decline in groundwater quality and table levels to fall substantially. After speaking with local well drillers in Nebraska, it's unusual for the need to install 9 wells to service a pivot of the size the applicant claims to be installing. Typically 3-4 wells are sufficient. I question both the applicant's actual need for this number of wells and whether or not the applicant will pump substantially more groundwater than stated in this application. I don't believe this application to be neither in the public interest or ethical, only in the Burnham operation's interest. This application also reduces the probability nearby future irrigation wells to be installed by other landowners in the area

Provide name and mailing address of the person filing this petition or the petitioner's legal counsel:

First Name: Austin Last Name: Davis

Mailing Address: 203 N Cottonwood St

City: Norfolk State: NE Zip: 68701

Note. This petition needs to be submitted via mail or personally served upon Water Rights no later than the deadline date provided in the public notice. The mailing address is provided above and should be sent to "Attention - Water Rights Program." A copy of this petition also needs to be mailed to, or personally served upon, the applicant whose mailing address is provided in the public notice.

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APR 06 2022

WATER RIGHTS
PROGRAM

13565 Larimore Ave
Omaha, NE 68164
Phone: 402-689-9989

Chief Engineer
Water Rights Program
Foss Building
523 E. Capital
Pierre, SD 57501

To: Chief Engineer

From: Kevin Herrmann, Trustee

Subject: Hearing on Water Permit Application No 2833-2, Brian Burnham

On March 28, 2022, I filed a petition opposing Application No 2833-2, Brian Burnham. On March 31, 2022, I received a Notice of Hearing. In accordance with that letter, I respectfully request the hearing be delayed for at least 20 days.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Herrmann", written in a cursive style.

Kevin Herrmann, Trustee

Vernon R Herrmann and Marilyn S Herrmann Irrevocable Trust of 2019

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APR 08 2022

WATER RIGHTS
PROGRAM

Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501

Brian Burnham
Appl. 2833-2

Dear Sir:

I am writing to request a delay in the hearing for Application No 2833-2 because of a conflict in time commitments for me on that date.

Thank you for your consideration of rescheduling the hearing date.

KayCee Kollmar-Condon
31143 299th St.
Millboro, SD 57580-6114

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APR 08 2022

WATER RIGHTS
PROGRAM

Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501

Brian Burnham
Apl. 2833-2

Dear Sir:

I am writing to request a delay in the hearing for application No. 2833-2 because of a conflict of time commitments for me on that date.

Thank you for considering rescheduling the hearing date.

Marie Condon

31143 299th St,

Millboro, SD 57380-6114

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APR 08 2022

WATER RIGHTS
PROGRAM

04-05-22

Department of Agriculture and Natural Resources
Joe Foss Building
523 E Capital Ave.
Pierre, SD 57501-3182

Dear Chief Engineer Grondlund:

This letter is in reference to the appeal I made on permit application No. 2833-2 and permit application No. 2834-2. I ask to have the hearing that is set for May 4, 2022 be delayed to allow for appropriate preparation and to seek legal representation. Thank you for your consideration in this matter.

Aaron Davis

A handwritten signature in black ink that reads "Aaron Davis". The signature is written in a cursive style with a large, stylized "A" and "D".

04-05-22

Department of Agriculture and Natural Resources
Joe Foss Building
523 E Capital Ave.
Pierre, SD 57501-3182

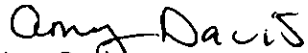
RECEIVED

APR 08 2022

WATER RIGHTS
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Dear Chief Engineer Grondlund:

This letter is in reference to the appeal I made on permit application No. 2833-2 and permit application No. 2834-2. I ask to have the hearing that is set for May 4, 2022 be delayed to allow for appropriate preparation and to seek legal representation. Thank you for your consideration in this matter.


Amy Davis

April 5, 2022

Eric Gronlund
Chief Engineer
Water Rights Program

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WATER RIGHTS
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Dear Mr. Gronlund

In reference to the petition that I filed on the matter of Water Permit Application #2833-2. I would like to ask for a delay of the hearing due to prior commitments.

Thankyou for your consideration

Susan Davis

April 5, 2022

Eric Gronlund
Chief Engineer
Water Rights Program

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APR 08 2022

WATER RIGHTS
PROGRAM

Dear Mr. Gronlund

In reference to the petition that I filed on the matter of Water Permit Application # 2833-2. I would like to ask for a delay of the hearing due to prior commitments.

Thank you for your consideration

Charles Davis



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

April 19, 2022

NOTICE

TO: Brian Burnham Petitioners
31166 300th St (see attached list dated April 19, 2022)
Winner SD 57580

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
SD DANR, Water Rights Program

SUBJECT: Automatic Delay of Hearing on Water Permit Application No. 2833-2, Brian Burnham

Petitions have been filed in the matter of Water Permit Application No. 2833-2 in response to the Notice of Application published in the Winner Advocate and Huron Daily Plainsman on March 23, 2022. A Notice of Hearing dated March 31, 2022, was sent to the applicant and any person filing a petition by that date. Since then, two additional petitions have been received. The notice scheduled a hearing before the Water Management Board on May 4, 2022, concerning Application No. 2833-2. In response to this notice, several petitioners filed requests for a delay of the May 4, 2022 hearing date by the April 11, 2022 filing deadline (copy of each enclosed). Pursuant to SDCL 46-2A-5 and the Notice of Hearing dated March 31, 2022, these requests for a delay is construed as written notice to the chief engineer requesting an automatic delay of the May 4, 2022 hearing date. Therefore, the hearing on Application No. 2833-2 is automatically delayed pursuant to SDCL 46-2A-4 and 46-2A-5 and will NOT be held on May 4, 2022.

The hearing to consider Application No. 2833-2 is now tentatively scheduled for the July 6th and 7th, 2022 Water Management Board meeting. The Board will formalize the July 2022 meeting dates at the May 4th and 5th, 2022 meeting. Future notice of the time and place of the hearing for Application No. 2833-2 will be provided.

Notices, orders, and other pleadings filed in the matter of Water Permit Application No. 2833-2 are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>.

Questions regarding the hearing process may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

Petitioner List
Water Permit Application No. 2833-2, Brian Burnham
April 19, 2022

PETITIONERS

Susan Davis
31263 302nd St
Millboro SD 57580

Aaron Davis
30113 313th Ave
Winner SD 57580

Alex Davis
30113 313th Ave
Winner SD 57580

Amy Davis
30113 313th Ave
Winner SD 57580

Marie Condon
31143 299th St
Millboro SD 57580-6114

KayCee Kollmar-Condon
31143 299th St
Millboro SD 57580-6114

Kevin Herrmann
13565 Larimore Ave
Omaha NE 68164

Austin Davis
203 N Cottonwood St
Norfolk NE 68701

Jody Soles
29861 310th Ave
Millboro SD 57580

RECEIVED

APR 06 2022

WATER RIGHTS
PROGRAM

13565 Larimore Ave
Omaha, NE 68164
Phone: 402-689-9989

Chief Engineer
Water Rights Program
Foss Building
523 E. Capital
Pierre, SD 57501

To: Chief Engineer

From: Kevin Herrmann, Trustee

Subject: Hearing on Water Permit Application No 2833-2, Brian Burnham

On March 28, 2022, I filed a petition opposing Application No 2833-2, Brian Burnham. On March 31, 2022, I received a Notice of Hearing. In accordance with that letter, I respectfully request the hearing be delayed for at least 20 days.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Herrmann", written in a cursive style.

Kevin Herrmann, Trustee

Vernon R Herrmann and Marilyn S Herrmann Irrevocable Trust of 2019

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APR 08 2022

WATER RIGHTS
PROGRAM

Chief Engineer
Water Rights Program
Foss Building
523 E. Capitol Ave.
Pierre, SD 57501

Brian Burnham
Appl. 2833-2

Dear Sir:

I am writing to request a delay in the hearing for Application No. 2833-2 because of a conflict in time commitments for me on that date.

Thank you for your consideration of rescheduling the hearing date.

KayCee Kollmer-Condon
31143 299th St.
Millboro, SD 57580-6114

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APR 08 2022

WATER RIGHTS
PROGRAM

Brian Burnham

Apl. 2833-2

Chief Engineer
Water Rights Program
Loss Building
523 E. Capitol Ave.
Pierre, SD 57501

Dear Sir:

I am writing to request a delay in the hearing for application No. 2833-2 because of a conflict of time commitments for me on that date.

Thank you for considering rescheduling the hearing date.

Marie Condon

31143 299th St.

Millboro, SD 57580-6114

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APR 08 2022

WATER RIGHTS
PROGRAM

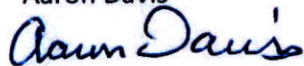
04-05-22

Department of Agriculture and Natural Resources
Joe Foss Building
523 E Capital Ave.
Pierre, SD 57501-3182

Dear Chief Engineer Grondlund:

This letter is in reference to the appeal I made on permit application No. 2833-2 and permit application No. 2834-2. I ask to have the hearing that is set for May 4, 2022 be delayed to allow for appropriate preparation and to seek legal representation. Thank you for your consideration in this matter.

Aaron Davis

A handwritten signature in blue ink that reads "Aaron Davis". The signature is written in a cursive style with a large, stylized "A" and "D".

04-05-22

Department of Agriculture and Natural Resources
Joe Foss Building
523 E Capital Ave.
Pierre, SD 57501-3182

RECEIVED

APR 08 2022

WATER RIGHTS
PROGRAM

Dear Chief Engineer Grondlund:

This letter is in reference to the appeal I made on permit application No. 2833-2 and permit application No. 2834-2. I ask to have the hearing that is set for May 4, 2022 be delayed to allow for appropriate preparation and to seek legal representation. Thank you for your consideration in this matter.


Amy Davis

April 5, 2022

Eric Gronlund
Chief Engineer
Water Rights Program

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APR 08 2022

WATER RIGHTS
PROGRAM

Dear Mr. Gronlund

In reference to the petition that I filed on the matter of Water Permit Application # 2833-2. I would like to ask for a delay of the hearing due to prior commitments.

Thankyou for your consideration

Charles Janni

April 5, 2022

Eric Gronlund
Chief Engineer
Water Rights Program

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APR 08 2022

WATER RIGHTS
PROGRAM

Dear Mr. Gronlund

In reference to the petition that I filed on the matter of Water Permit Application # 2833-2, I would like to ask for a delay of the hearing due to prior commitments.

Thankyou for your consideration

Susan Davis

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice dated April 19, 2022, with attachments regarding Water Permit Application No. 2833-2 – Brian Burnham, was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on April 19, 2022.

Brian Burnham
31166 300th St
Winner SD 57580

And Petitioners as follows:

Susan Davis
31263 302nd St
Millboro SD 57580

Alex Davis
30113 313th Ave
Winner SD 57580

Marie Condon
31143 299th St
Millboro SD 57580-6114

Aaron Davis
30113 313th Ave
Winner SD 57580

Amy Davis
30113 313th Ave
Winner SD 57580

KayCee Kollmar-Condon
31143 299th St
Millboro SD 57580-6114

Austin Davis
203 N Cottonwood St
Norfolk NE 68701

Jody Soles
29861 310th Ave
Millboro SD 57580

Kevin Herrmann
13565 Larimore Ave
Omaha NE 68164

Above also Sent Inter-office to:

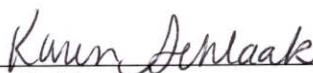
Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

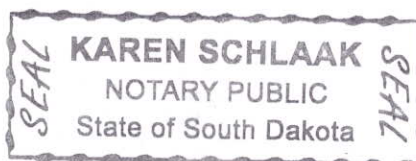


Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 19th day of April, 2022.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



RICHARDSON LAW FIRM

RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP

ONE COURT STREET
POST OFFICE BOX 1030
ABERDEEN, SD 57402-1030

E-MAIL: rvogel@rwwsh.com

www.rwwsh.com

RECEIVED

APR 22 2022

WATER RIGHTS
PROGRAM

ROYA WISE
JACK H. HIEB
ZACHARY W. PETERSON
KIMBERLY A. DORSETT
STACY M. JOHNSON
JOSHUA K. FINER
RYAN S. VOGEL
DOMINIC F. KING
CHRISTIN WEIDEMAN

DWIGHT CAMPBELL (1887-1964)
STANLEY R. VOAS (1909-1972)
JAMES A. WYLY (1939-2009)
LLOYD C. RICHARDSON, JR. (1924-2012)
RICHARD L. RUSSMAN (1967-2014)
WILLIAM K. SAUCK, JR. (RETIRED)

TELEPHONE (605) 225-6310
FACSIMILE (605) 225-2743

April 20, 2022

✓ Mr. Eric Gronlund
Chief Engineer
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Ann Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501

Charles Davis
31263 - 302nd St.
Millboro, SD 57580

Susan Davis
31263 - 302nd St.
Millboro, SD 57580

Aaron Davis
30113 - 313th Ave.
Winner, SD 57580

Alex Davis
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Winner, SD 57580

Amy Davis
30113 - 313th Ave.
Winner, SD 57580

Marie Condon
31143 - 299th St.
Millboro, SD 57580-6114

KayCee Kollmar-Condon
31143 - 299th St.
Millboro, SD 57580-6114

Kevin Herrmann
13565 Larimore Ave.
Omaha, NE 68164

Dear All:

Re: Brian Burnham Water Permit
Application 2833-2

Enclosed please find my notice of appearance regarding
the above listed water permit application. This is intended as
service upon you by mail.

Best regards,


Ryan S. Vogel

RSV/kkt
Enclosure

cc: Brian Burnham

RECEIVED

APR 22 2022

THE DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
BOARD OF WATER MANAGEMENT

WATER RIGHTS
PROGRAM

* * * * *

In the Matter of the Water
Permit Application No. 2833-2,
Brian Burnham.

NOTICE OF APPEARANCE

* * * * *

COMES NOW, Ryan S. Vogel, of Richardson, Wyly, Wise,
Sauck & Hieb, LLP, and hereby notes his appearance on behalf of
Brian Burnham in the above-captioned matter.

Dated this 20th day of April, 2022.

RICHARDSON, WYLY, WISE, SAUCK
& HIEB, LLP

By 
Attorneys for Brian Burnham

One Court Street
Post Office Box 1030
Aberdeen, SD 57402-1030
Telephone No. 605-225-6310

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Brian
Burnham, hereby certifies that on the 20th day of April, 2022, a
true and correct copy of **NOTICE OF APPEARANCE** was mailed by
first-class mail to:

Mr. Eric Gronlund
Chief Engineer
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Ann Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501

Charles Davis
31263 - 302nd St.
Millboro, SD 57580

Susan Davis
31263 - 302nd St.
Millboro, SD 57580

Aaron Davis
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Winner, SD 57580

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Winner, SD 57580

Amy Davis
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Winner, SD 57580

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Millboro, SD 57580-6114

KayCee Kollmar-Condon
31143 - 299th St.
Millboro, SD 57580-6114

Kevin Herrmann
13565 Larimore Ave.
Omaha, NE 68164





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

May 25, 2022

NOTICE OF HEARING

TO: Brian Burnham Ryan S. Vogel, Attorney
31166 300th St Richardson Law Firm
Winner SD 57580 PO Box 1030
Aberdeen SD 57402-1030

Petitioners
(see attached list dated April 19, 2022)

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

FROM: Eric Gronlund, Chief Engineer
SD DANR, Water Rights Program

SUBJECT: Scheduling of Hearing on Water Permit Application No. 2833-2, Brian Burnham

The Water Management Board will conduct a hearing to consider Application No. 2833-2 at 9:45 AM (Central Time), on Wednesday, July 6, 2022, at the Floyd Matthew Training Center, Joe Foss Building, 523 E. Capitol Avenue, Pierre SD. The time is an estimate and may be delayed due to prior items on the agenda.

Pursuant to SDCL 46-2-9, 46-2-11, and 46-2A-23, the Board has legal authority and jurisdiction to conduct this hearing. Applicable provisions of the public notice published in the Winner Advocate on March 23, 2022, Huron Daily Plainsman on March 23, 2022, and the Notice of Hearing dated March 31, 2022, still apply.

Notices, orders, and other pleadings filed in the matter of Water Permit Application No. 2833-2 are posted on DANR's contested case page at <https://danr.sd.gov/public/ContestedCase.aspx>.

Questions regarding the hearing process may be directed to Ron Duvall, Water Rights Program at (605) 773-3352 or ron.duvall@state.sd.us.

Petitioner List
Water Permit Application No. 2833-2, Brian Burnham
April 19, 2022

PETITIONERS

Susan Davis
31263 302nd St
Millboro SD 57580

Aaron Davis
30113 313th Ave
Winner SD 57580

Alex Davis
30113 313th Ave
Winner SD 57580

Amy Davis
30113 313th Ave
Winner SD 57580

Marie Condon
31143 299th St
Millboro SD 57580-6114

KayCee Kollmar-Condon
31143 299th St
Millboro SD 57580-6114

Kevin Herrmann
13565 Larimore Ave
Omaha NE 68164

Austin Davis
203 N Cottonwood St
Norfolk NE 68701

Jody Soles
29861 310th Ave
Millboro SD 57580

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Hearing dated May 25, 2022, regarding Water Permit Application No. 2833-2 – Brian Burnham, was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on May 25, 2022.

Brian Burnham
31166 300th St
Winner SD 57580

Ryan S. Vogel, Attorney
Richardson Law Firm
PO Box 1030
Aberdeen SD 57402-1030

And Petitioners as follows:

Susan Davis
31263 302nd St
Millboro SD 57580

Alex Davis
30113 313th Ave
Winner SD 57580

Marie Condon
31143 299th St
Millboro SD 57580-6114

Aaron Davis
30113 313th Ave
Winner SD 57580

Amy Davis
30113 313th Ave
Winner SD 57580

KayCee Kollmar-Condon
31143 299th St
Millboro SD 57580-6114

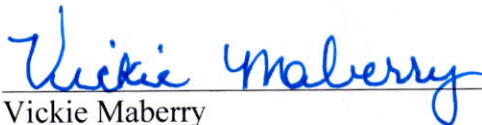
Austin Davis
203 N Cottonwood St
Norfolk NE 68701

Jody Soles
29861 310th Ave
Millboro SD 57580

Kevin Herrmann
13565 Larimore Ave
Omaha NE 68164

Above also Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

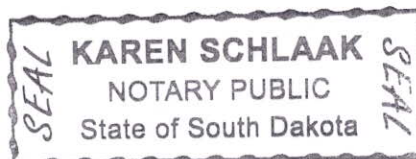


Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 25th day of May, 2022.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

July 8, 2022

NOTICE

TO: Brian Burnham Blake Burnham Ryan S. Vogel, Attorney
31166 300th St 31166 300th St Richardson Law Firm
Winner SD 57580 Winner SD 57580 PO Box 1030
Aberdeen SD 57402-1030

Petitioners
(see attached list dated July 8, 2022)

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
SD DANR, Water Rights Program

SUBJECT: Preparation of Findings of Fact, Conclusions of Law and Final Decision in the matter of
Water Permit Application No. 2833-2, Brian Burnham and No. 2834-2, Blake Burnham

The Water Management Board directed counsel for the Water Rights Program to prepare proposed Findings of Fact, Conclusions of Law and a Final Decision in the matter of the approval of Water Permit Application No. 2833-2, Brian Burnham and No. 2834-2, Blake Burnham.

The Board requested that the proposed Findings of Fact, Conclusions of Law and Final Decision be mailed to Board Counsel David McVey and all other parties by August 31, 2022. Written objections or comments in support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law and Final Decision are to be mailed to Board and Water Rights Program counsel and other parties by September 15, 2022. Board counsel requests that the draft findings or alternative findings be provided in both a PDF format and a WORD format file via email to David.McVey@state.sd.us.

The Board will consider adoption of Findings of Fact, Conclusions of Law and Final Decision at 9:30 AM, on Wednesday, October 5, 2022, in the Floyd Matthew Training Center, Joe Foss Building, 523 East Capitol Avenue, Pierre SD. The agenda time is an estimate and may be delayed due to prior issues on the agenda. Notice will be provided if there is a change in the hearing time.

At the Board's discretion, oral arguments in opposition or support of the proposed Findings of Fact, Conclusions of Law and Final Decision, or alternative Findings of Fact, Conclusions of Law and Final

Decision may be made at the October 5, 2022 meeting. The evidentiary hearing was completed July 6, 2022. No additional testimony will be received at the meeting on October 5, 2022.

If you have questions about the findings process, please contact Ann Mines-Bailey at (605) 773-3215.

c: David McVey, Water Management Board Counsel

Petitioner List
Water Permit Application No. 2833-2 and 2834-2
July 8, 2022

PETITIONERS

Susan Davis
31263 302nd St
Millboro SD 57580

Aaron Davis
30113 313th Ave
Winner SD 57580

Alex Davis
30113 313th Ave
Winner SD 57580

Amy Davis
30113 313th Ave
Winner SD 57580

Charles Davis
31263 302nd St
Millboro SD 57580

Marie Condon
31143 299th St
Millboro SD 57580-6114

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31143 299th St
Millboro SD 57580-6114

Kevin Herrmann
13565 Larimore Ave
Omaha NE 68164

Austin Davis
203 N Cottonwood St
Norfolk NE 68701

Jody Soles
29861 310th Ave
Millboro SD 57580

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice dated July 8, 2022, regarding preparation of findings of fact, conclusions of law and a final decision in the matter of Water Permit Application No. 2833-2, Brian Burnham and No. 2834-2, Blake Burnham, was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on July 8, 2022.

Brian Burnham
31166 300th St
Winner SD 57580

Blake Burnham
31166 300th St
Winner SD 57580

Ryan S. Vogel, Attorney
Richardson Law Firm
PO Box 1030
Aberdeen SD 57402-1030

And Petitioners as follows:

Susan Davis
31263 302nd St
Millboro SD 57580

Alex Davis
30113 313th Ave
Winner SD 57580

Marie Condon
31143 299th St
Millboro SD 57580-
6114

Kevin Herrmann
13565 Larimore Ave
Omaha NE 68164

Aaron Davis
30113 313th Ave
Winner SD 57580

Amy Davis
30113 313th Ave
Winner SD 57580

KayCee Kollmar-
Condon
31143 299th St
Millboro SD 57580-
6114

Charles Davis
31263 302nd St
Millboro SD 57580

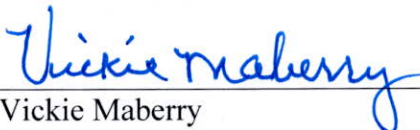
Austin Davis
203 N Cottonwood St
Norfolk NE 68701

Jody Soles
29861 310th Ave
Millboro SD 57580

Above also Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

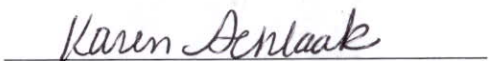
David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

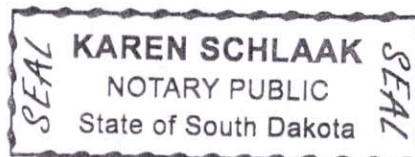


Vickie Maberry
Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 8th day of July, 2022.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025





Rosebud Sioux Tribe

Sicangu Oyate

P.O. Box 430

Rosebud, SD 57570

Phone: (605) 747-2381 Fax: (605) 747-2243

Scott Herman
President
William Kindle
Vice President
Steven DeNoyer III
Treasurer
Nicole Marshall
Secretary

July 5, 2022

Mr. Eric Gronlund, Chief Engineer
SD DANR, Water Rights Program
Joe Foss Building
523 E Capitol Ave
Pierre, SD 57501-3182

RECEIVED

JUL 11 2022

OFFICE OF
WATER

Subject: Water Permit Application No 2833-2, Blake Burnham

Dear Mr. Gronlund:

Please refer to the attached map Millboro Twp T95N and R77w, it is apparent that there are a number of parcels of Indian land in the area. As a result Rosebud Sioux Tribe is concerned about the Water Permit Application No 2833-2 and the concern is more precisely because the Rosebud Sioux Tribal enrolled member Mark Raymond's land north east of the proposed wells can be adversely impacted by water withdrawal from the Terrace deposits. We have reviewed the hydro-geological evaluation of the proposed well sites and we are taken a back that there is no mention of climate change- drought as a factor that can adversely impact the recharge of the Terrace deposit as an aquifer and the flow of the lost creek that is adjacent to the proposed well sites and that traverses the Indian Lands including Mark Raymond's. We have attached copies of Drought Monitor maps of United States of America and the State of South Dakota including Tripp County where the proposed well site are located. As can be seen that drought/ abnormally dry conditions persist in Tripp County and your hydro- geological evaluation needs to be revised based on the lack of water (drought – abnormally dry) to recharge the aquifer and the flow of Lost Creek.

We strongly recommend that you reject Water Permit No 2833-2 that has potential to mine water by pumping 830 gallons per minute from Terrace deposits in contradiction to State of South Dakota Law. Rosebud Sioux Tribe has a vested interest to make sure that Indian lands and enrolled tribal members are not adversely affected by approval and implementation of the Water Permit Application No 2833-2. Thank you and if you have any questions, please direct them to Syed Huq, Director, Water Resources at 605-747-2559.

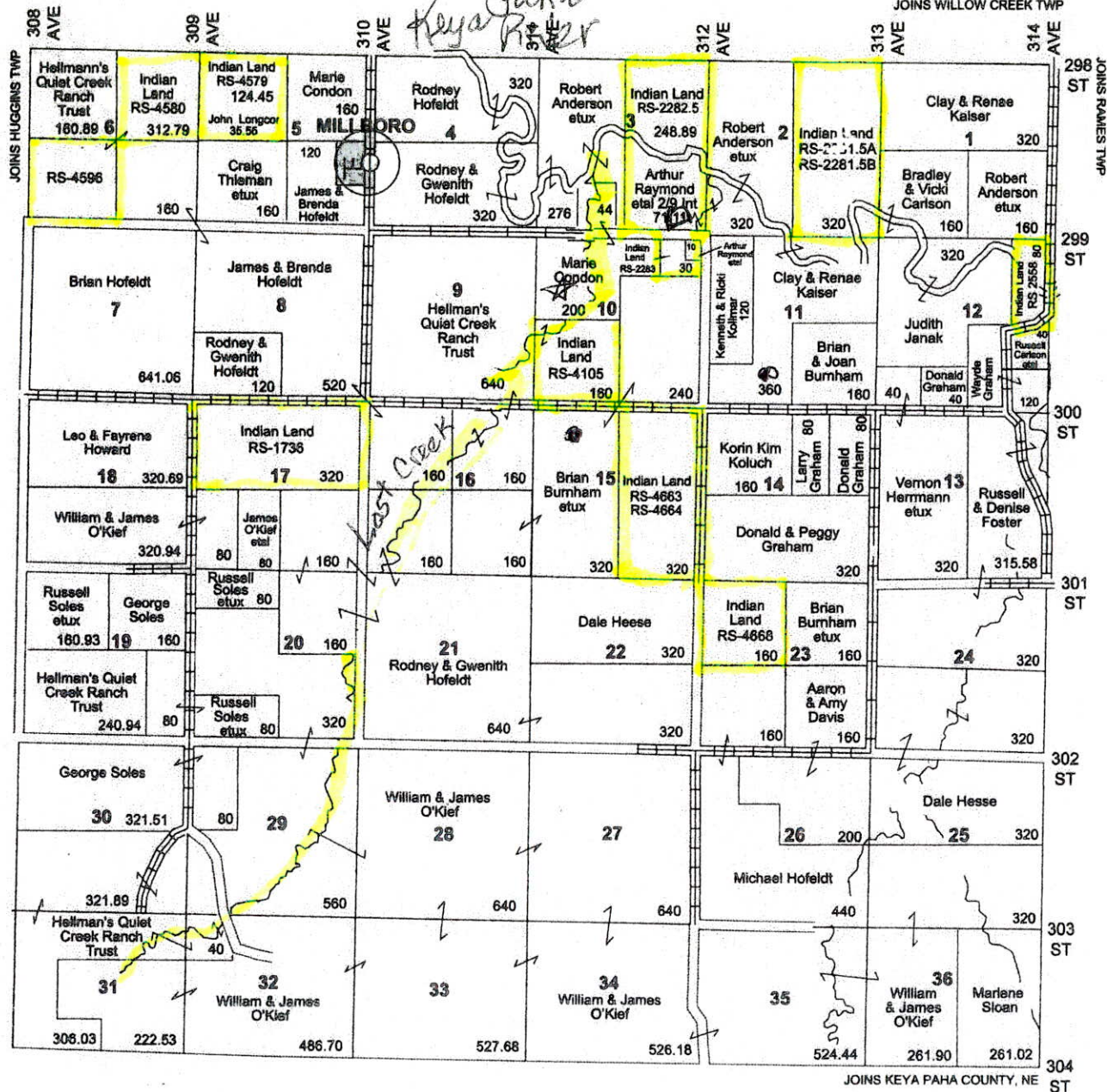
Sincerely,

Scott Herman, President
Rosebud Sioux Tribe

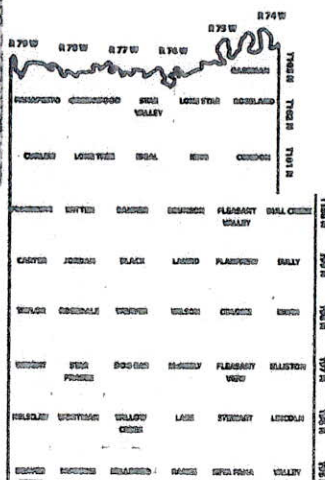
Cc: Mr. Mark Raymond

R 77 W

JOINS WILLOW CREEK TWP



LAND OWNER MAPS

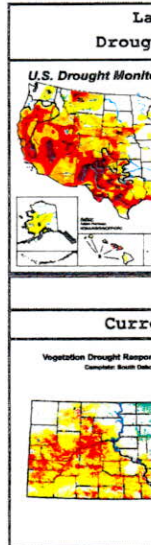


Current

Forecasts: Outlooks

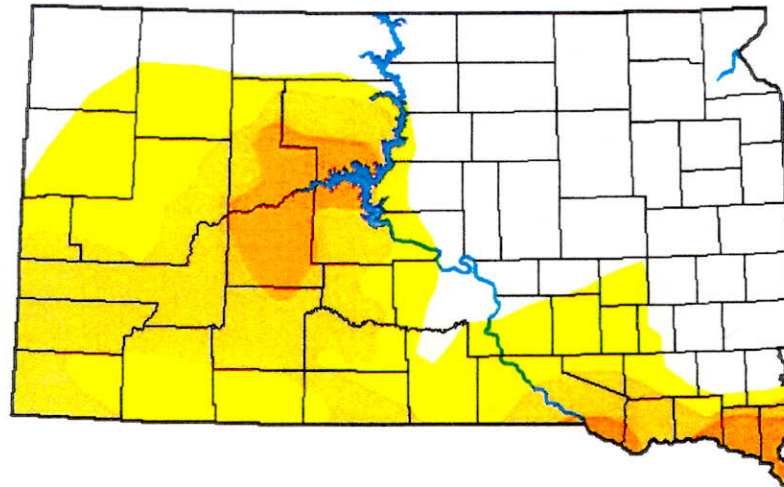
Outlook: W

General Drought Information



Links: [The National Drought Mitigation Center](#)

U.S. Drought Monitor South Dakota



June 21, 2022

(Released Thursday, Jun. 23, 2022)

Valid 8 a.m. EDT

Drought Conditions (Percent Area)

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	45.49	54.51	30.15	6.40	0.00	0.00
Last Week 06-14-2022	45.54	54.46	30.04	6.34	0.00	0.00
3 Months Ago 03-22-2022	18.13	81.87	65.77	24.55	0.00	0.00
Start of Calendar Year 01-04-2022	21.31	78.69	34.91	6.63	0.00	0.00
Start of Water Year 09-28-2021	7.06	92.94	83.37	59.21	10.76	0.00
One Year Ago 06-22-2021	1.49	98.51	90.16	63.11	10.50	0.00

Intensity

None	D2 Severe Drought
D0 Abnormally Dry	D3 Extreme Drought
D1 Moderate Drought	D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/About.aspx>

Author:

Adam Hartman
NOAA/NWS/NCEP/CPC



droughtmonitor.unl.edu

Temperature

Precipitation

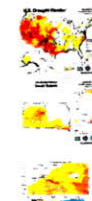
Standardized Precipitation Index (SPI)?

[The National Drought Mitigation Center](#)
[Citation](#)

Hydrologic Information

Agricultural Information

Soil Moisture

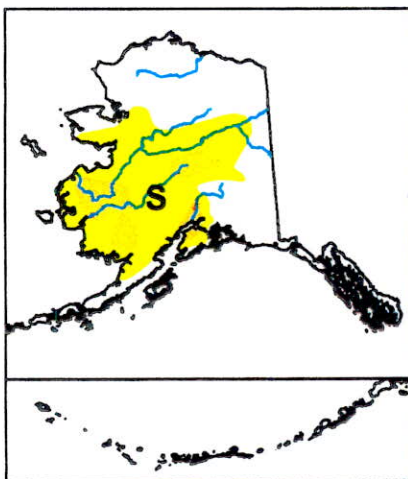
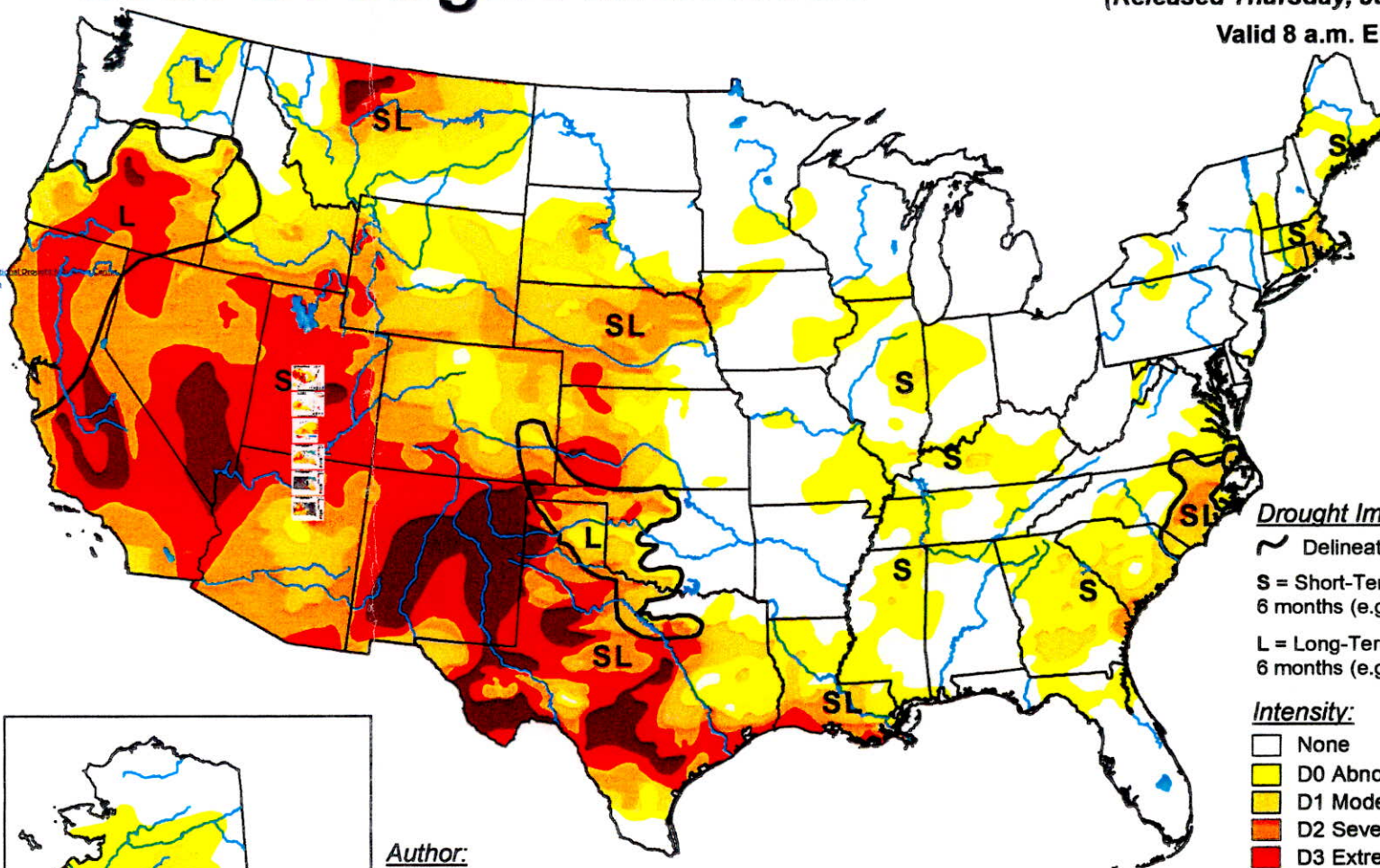


U.S. Drought Monitor

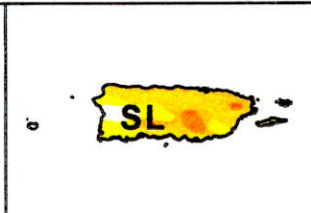
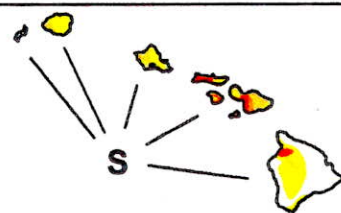
June 21, 2022

(Released Thursday, Jun. 23, 2022)

Valid 8 a.m. EDT



Author:
Adam Hartman
NOAA/NWS/NCEP/CPC



Drought Impact Types:

~ Delineates dominant impacts

S = Short-Term, typically less than 6 months (e.g. agriculture, grassland)

L = Long-Term, typically greater than 6 months (e.g. hydrology, ecology)

Intensity:

- None
- D0 Abnormally Dry
- D1 Moderate Drought
- D2 Severe Drought
- D3 Extreme Drought
- D4 Exceptional Drought

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/About.asp>



droughtmonitor.unl.edu

RECEIVED

SEP 14 2022

OFFICE OF
WATER

September 11, 2022

David McVey
Water Management Board Counsel
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

RE: *Water Permit Application No. 2833-2, Brian Burnham and
Water Permit Application No. 2834-2, Blake Burnham*

Dear Mr. McVey:

This letter serves as a written objection and alternative Finding of Facts to the "Water Rights Program's Proposed Finding of Fact, Conclusion of Law and Final Decision." I respectfully request that this letter along the Enclosure be considered at the Water Management Board's October 5, 2022, Meeting or at a subsequent meeting should consideration of Applications 2833-2 and 2834-2 be delayed.

I am enclosing a letter from Nate Hunke who is a hydrologist and principal in charge with Prairie Consulting Group. The Board recognized Mr. Hunke as an expert witness at the hearing on July 7, 2022. I respectfully submit my letter and the Enclosure which is Mr. Hunke's letter as Exhibits to be admitted and considered by the Board.

I also ask the Board to consider the following:

The Board's FINDINGS OF FACT, Item 39 on Page 10 of the "Water Rights Program's Proposed Finding of Fact, Conclusion of Law and Final Decision."

"Mr. Gronlund also discussed the potential of adding a qualification for an additional observation well."

I would respectfully point out that the Board's FINAL DECISION on pages 13 and 14 in the "Water Rights Program's Proposed Finding of Fact, Conclusion of Law and Final Decision" did not include this qualification suggested by Mr. Gronlund. I would request the Board amend the FINAL Decision to include this qualification. Should the Board decline to include this qualification, I would respectfully request the Board formally document why they would not consider the suggestion of Mr. Gronlund who is the Chief Engineer of the SD DANR, Water Rights Program.

Conclusion

I respectfully request the Board review this letter and the Enclosure and make reasonable changes including but not limited to:

- Adding the additional qualification made by the Chief Engineer to both permits.
- Combining the Permits into 1 Permit as discussed in the Enclosure and specifically when Mr. Hunke is discussing Item 34 on page 2.

- Reducing the maximum overall maximum conversion rate so the overall water withdrawals are controlled so there is not a reduction of needed water supplies for wells in the area.
- Placing an observation well that is monitored east of the proposed pumping wells in Application 2834-2, between the proposed pumping wells and the nearest private wells in the vicinity of the pumping wells, not to the north. However, the more observation wells, the better the definition of the effects of the pumping on the aquifer. The nearest private well is located less than ¼ mile east of the proposed pumping wells.

Sincerely,



Kevin Herrmann

Petitioner

Enclosure: Water Rights Permit Response – Nate Hunke

Cc:

Ann Mines Baily, Assistant Attorney General

Ryan S. Vogel, Attorney for Applicants

Bill Larson, Chair of DANR, Water Rights Board

Brian Burnham, Applicant Water Permit Application No. 2833-2

Blake Burnham, Applicant Water Permit Application No. 2834-2

Parties on Certificate of Service

RECEIVED

SEP 14 2022

OFFICE OF
WATER



PRAIRIE CONSULTING GROUP, INC.

312 9th Avenue SE, Suite C • Watertown, South Dakota 57201

Phone: 605-886-4009 • Fax: 605-882-4152

September 10, 2022

Mr. Kevin Herrmann
13565 Larimore Ave
Omaha, NE 68164

RE:
Brian and Blake Burnham Irrigation Wells
Water Permit No. 2833-2
NE1/4SE1/4 sec.16. W1/2 sec.15 T.95N. R.77W.
Water Permit No. 2834-2
SE1/4 sec.11 T.95N. R.77 W.
Tripp Co., South Dakota

Dear Mr. Herrmann:

The following is in response to the Water Rights Permit Approval dated August 31, 2022 for the above-referenced water appropriations permit applications:

FINDINGS AND FACTS

1. Item 27

The boards FINDINGS OF FACTS indicate that "Mr. Mathiowetz testified that the applicants will most likely pump their own wells dry before the effects of pumping are felt by existing rights not held by the applicants." It is my understanding that the "unlawful impairment" clause of the approval process includes all domestic wells, including the owners of private/domestic wells that hold the approved appropriation permits. Wouldn't pumping the owners private wells dry represent an "unlawful impairment"? Doesn't the permit applicants owners have the option of switching to an alternative water source if their wells do go dry and continue pumping at the maximum rate outlined in the permit application for the irrigation wells. Please note that the ground water model I developed does not include the owners domestic/private wells in the assessment.

2. Item 33

The permit application approval indicated that my analysis was based on the ground water model that I created. The model was not created by me, the model was created by the United States Geological Survey (USGS Modflow 6 updated in 2022. I simply utilized the model already created by USGS and applied appropriate input parameters to the model to emulated ground water flow conditions in the vicinity of the proposed pumping wells outlined in the above-referenced permit applications, based on available literature and data provided by the South Dakota Geological Survey (SDGS), the United States Geological Survey (USGS) and the South Dakota Department of Agriculture and Natural Resources (DANR) Water Rights.

3. Item 34

The permit application approval indicates that I could not provide a rate of diversion that would be acceptable. I was not hired to provide an acceptable pumping rate for the pumping wells. That is the obligation of the applicants and the approval of the board. My job was simply to determine the impacts of the proposed appropriations/diversions outlined in the above-referenced permit applications to domestic/private wells in the vicinity of the pumping wells. The final decision of the boards' approval mandates that the permit application diversions may not be exercised simultaneously. This information was not available to me at the time the model was developed for the above-referenced appropriations. However, it is likely that this decision would not impact the effects to the private wells near the Blake Burnham proposed diversion due to proximity of the private wells to the proposed diversion point and rate. Additional modeling would be required to assess the impacts of non-simultaneous application of the permit applications. My question to the board is "if the permit applications are separate and filed by different applicants, what prevents the applicant from applying the permitted pumping rate independent of any other appropriations permit in the area?" Shouldn't the permit applications be combined into one (1) application to make Item 4 of the FINAL DECISION enforceable?

As far as placement of observation wells in the vicinity of the Blake Burnham pumping well, I recommend that an observation well be placed and monitored east of the proposed pumping wells (application No. 2834-2), between the proposed pumping wells and the nearest private wells in the vicinity of the pumping wells, not to the north. However, the more observation wells, the better the definition of the effects of pumping on the aquifer. The nearest private well is located less than ¼ mile east of the proposed pumping wells.

4. Item 35

The board finds that the ground water model analysis I developed is unreliable. What are the qualifications of the board to make this decision? They indicate that the assumed diversions are not reflective of the applications or current activity in the aquifer. When performing the aquifer model analysis, I assumed that the pumping rates outlined in the permit applications are "reflective" of the operational pumping rates as permit approval allows the applicant to operate the wells, up to but not exceeding the rate outlined in the permit application. In other words, the assumptions are based on the diversion rates outlined in the permit application. Subsequently,

the board decided that the applications may not be applied simultaneously (see the August 31, 2022 permit application approval). Again, my question to the board is if the permit applications are separate and filed by different applicants, what permits the applicant from applying the permit independent of any other appropriations permit in the area? Shouldn't the permit applications be combined into one (1) application to make Item 4 of the FINAL DECISION enforceable?

The board states that the model assumed locations and depths of private wells and water sources in which they are completed and further assumed that all were in use and that all withdraw the maximum limit allowable for domestic use. In fact, it is my understanding that private wells do not have to be permitted by the State of South Dakota Water Rights Board. It is also my understanding that the locations and depths of the private wells in the vicinity of the proposed pumping wells were provided by the private well owners of the private wells. In addition, the model does not assume a maximum domestic use but an "average" household use in the United States. This is clearly stated in my report under the section entitled "Ground Water Withdrawals".

However, if I had assumed "maximum allowable" domestic well pumping rates, the model would likely estimate additional drawdown in the private wells, not less drawdown. Therefore the "average" household value provides a conservative estimate regarding estimated drawdown in the private wells. In addition, the existence of the private/domestic well implies that the private/domestic well can be utilized to pump water for domestic use, at any time, now or in the future.

It is my understanding that private domestic wells do not need to be permitted by the State of South Dakota Water Rights Board and an unpermitted well does not negate the application of the "unlawful impairment" clause of the permit application approval process.

CONCLUSIONS OF LAW

1. Item 6

"South Dakota Codified Law section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicants proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in public interest".

The model I developed was based on available literature and data for the impacted aquifer provided by the South Dakota Geological Survey (SDGS), the United States Geological Survey (USGS) and the South Dakota Department of Agriculture and Natural Resources (DANR) Water Rights. The model run I developed provided evidence that an adverse impact to nearby private wells would occur if the permitted diversion rates are approved. This is "reasonable probability" that the pumping of the irrigation wells at the proposed rate would result in "unlawful impairment".

2. Item 7

"First factor for consideration under SDCL 46-2A-9 is whether there is water available for appropriation." This requirement is irrelevant in regard to the potential impacts or "unlawful impairment" to nearby private wells.

3. Item 10

"The second requirement of SDCL 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. Based on the ground water modeling results, "unlawful impairment" would occur to nearby private wells, whether the private/domestic wells are permitted. Please note that I recommend that the model be rerun using non-simultaneous pumping of the proposed irrigation wells.

FINAL DECISION

1. Item 1

"The wells approved under Water Permit Application No. 2833-2 are located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights."

The boards final decision that the pumping withdrawals be "controlled" is identical to my recommendation that based on model assessment results, the pumping rates of the irrigation wells outlined in the permit application be reduced from the maximum rate outlined in the permit application to prevent and "unlawful impairment" to the nearby domestic wells.

Please contact me with any questions.



Nathan T. Hunke, M.S., P.G.

President

Prairie Consulting Group, Inc.

312 9th Ave. SE Suite C

Watertown, SD 57201

(605) 886-4009 (w)

(605) 237-2207 (c)

STATE OF SOUTH DAKOTA



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MARK A. VARGO
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

August 30th, 2022

Bill Larson
DANR – Water Management Board
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501

Re: *Water Permit Application No. 2833-2, Brian Burnham and*
Water Permit Application No. 2834-2, Blake Burnham

Dear Mr. Larson:

Enclosed please find a copy of the Water Rights Program's Proposed Findings of Fact, Conclusions of Law, and Final Decision and Certificate of Service in the above-entitled matter. A copy of the Water Rights Program's Proposed Findings of Fact, Conclusions of Law, and Final Decision and Certificate of Service is being either mailed or hand-delivered to all interested parties.

Respectfully,


Ann F. Mines Bailey
Assistant Attorney General

AFM/cmb

Enclosures
cc w/encs: Parties on Certificate of Service

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2833-2, Brian	)	
Burnham,	)	
and	)	
IN THE MATTER OF WATER PERMIT	)	WATER RIGHTS PROGRAM'S
APPLICATION NO. 2834-2, Blake	)	PROPOSED FINDINGS OF FACT,
Burnham	)	CONCLUSIONS OF LAW, AND
		FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on July 7, 2022. Board members James Hutmacher, Rodney Freeman, Peggy Dixon, Leo Holzbauer, Chad Comes, and Bill Larson were present at the hearing and heard the evidence presented. Applicants Brian Burnham and Blake Burnham appeared represented by Ryan Vogel. Petitioners Kevin Herrmann, Aaron Davis, and Maric Condon appeared *pro se*. Ann F. Mines Bailey represented the DANR Water Rights Program and the Chief Engineer.

The Board, having considered the testimony and exhibits presented and all records and documents on file and having entered its oral decision and rulings on the parties' submissions, now enters the following:

FINDINGS OF FACT

1. On December 28, 2021, Water Rights received Water Permit Application No. 2833-2 on behalf of Brian Burnham seeking an appropriation of water for irrigation near Winner, South Dakota. Subsequent changes and supplemental information were received on March 4 and March 16, 2022.

The application in its final form proposes the diversion of 1.85 cubic feet of water per second (cfs) from two existing wells and seven proposed wells completed into the Quaternary Eolian aquifer functioning as an extension of the Ogallala aquifer in this location and located in the SE¼ Sec. 16-T95N-R77W in Tripp County. The application proposes to irrigate 130 acres also in the SE¼ Sec. 16-T95N-R77W.

2. On December 28, 2021, Water Rights also received Water Permit Application No. 2834-2 on behalf of Blake Burnham seeking an appropriation of 1.85 cfs for irrigation from four proposed wells to be completed into the Quaternary Terrace aquifer functioning as an extension of the Ogallala aquifer in this location in the W½SE¼ Sec. 11-T95N-R77W in Tripp County. The application proposes to irrigate 130 acres in the SE¼ Sec. 11-T95N-R77W.

3. The Chief Engineer, Eric Gronlund, recommended approval of these applications subject to qualifications.

4. Notices of Water Permit Application No. 2833-2 were timely advertised on March 23, 2022, in the Winner Advocate (Tripp County) and the Plainsman (Beadle County) and posted on the DANR website.

5. Notices of Water Permit Application No. 2834-2 were timely advertised on March 16, 2022, in the Winner Advocate (Tripp County) and the Plainsman (Beadle County) and posted on the DANR website.

6. DANR received the following timely petitions in opposition to Water Permit Application No. 2833-2, Brian Burnham: Susan Davis, Alex

Davis, Aaron Davis, Amy Davis, Kevin Herrmann, Marie Condon, and KayCee Kollmar-Condon.

7. DANR received the following timely petitions in opposition to Water Permit Application No. 2834-2, Blake Burnham: Charles Davis, Susan Davis, Alex Davis, Aaron Davis, Amy Davis, Kevin Herrmann, Marie Condon, and KayCee Kollmar-Condon

8. The matter was initially scheduled to be heard by the Water Management Board during its May 4, 2022 meeting; however, an automatic delay was requested, and the hearing was rescheduled for the next regular Board meeting in July.

9. Water Permit Applications Nos. 2833-2 and 2834-2 are new water permit applications which require a determination pursuant to SDCL § 46-2A-9 whether there is a reasonable probability that unappropriated water is available for the proposed use, whether the proposed use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

10. In considering water availability this Board must examine whether the average quantity of the water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

11. DANR witness, Adam Mathiowetz, a natural resources engineer with over ten years of experience, reviewed the permit application and

analyzed the hydrology of the Quaternary Eolian aquifer, Quaternary Terrace aquifer, and Ogallala aquifer. Mr. Mathiowetz additionally reviewed the information obtained from nearby observation wells, as well as current water right/permit files and well completion reports for the aquifers.

12. The High Plains aquifer includes several different formations including Arikarec, Ogallala, and quaternary deposits including alluvium and terrace and colian deposits.

13. For management purposes, Water Rights treats the Arikarec aquifer and the Ogallala aquifer as separate units.

14. The Quaternary Eolian aquifer consists of a group of wind-blown and deposited sediments that range from silt to medium-grain sand deposited as sheets, barchan, linear, and dome-like dunes or as a veneer on uplands. This deposit has an approximate areal extent of 610 acres and groundwater flow is toward Keya Paha River.

15. The Quaternary Terrace aquifer consists of a group of deposits of clay to boulder-sized clasts deposited as pediments, paleochannels, and terrace fills of former flood plains. The areal extent of this deposit is approximately 835 acres and groundwater flows toward the Keya Paha River.

16. The Ogallala aquifer in this location exists in unconfined conditions and is comprised of sand, silt, silty clay, sandstone, siltstone, and surficial gravel deposits. The areal extent of the main body of the Ogallala aquifer is approximately one million acres. Water movement within the Ogallala aquifer is toward the Keya Paha River.

17. Earlier studies indicate the presence of the High Plains aquifer in the location of the proposed points of diversion and that water movement is from southwest toward the northeast and the Keya Paha River. Further review of lithologic logs and geologic information of the area and conversations with the well driller who worked at the site in this matter, indicate that Ogallala aquifer materials are not present and that the Arikarce aquifer is not functioning as an aquifer at this location. Based upon the review of all this information, Mr. Mathiowetz concluded that the Quaternary Eolian and Quaternary Terrace aquifers in this location are functioning as an extension of the Ogallala aquifer.

18. Mr. Mathiowetz testified recharge to the Ogallala aquifer occurs mainly through infiltration of precipitation.

19. Several studies have been done regarding the rate of recharge to the Ogallala aquifer. While none of the studies are specific to the Quaternary Eolian and Quaternary Terrace deposits functioning as extensions of the Ogallala aquifer, several of the studies include both of these deposits as part of the areal extent of the Ogallala aquifer.

20. Using the recharge rates from those studies, which ranged from 1.3 inches per year to 3.4 inches per year, Mr. Mathiowetz calculated that recharge to the main body of the Ogallala aquifer ranges from 108,914 acre-feet per year to 284,852 acre-feet per year.

21. Mr. Mathiowetz further testified regarding withdrawals from the Ogallala aquifer. He testified that there are 171 water right permits and four

future use permits completed into the Ogallala aquifer with an estimated withdrawal of 31,128.3 acre-feet per year.

22. There are sixty-nine observation wells completed into the main body of the Ogallala aquifer. Six of the observation wells are located within five miles of the proposed points of diversion with the nearest observation well located within 1 mile south of the points of diversion proposed by Water Permit Applications No. 2833-2 and 2.5 miles from the points of diversion proposed by Water Permit Application No. 2834-2.

23. The data from the observation wells demonstrate a stable to slightly rising water level over the periods of record with an exception in Bennett County, which is considered an outlier. The natural conditions dominate changes in water level and, therefore, there is recharge and natural discharge available for appropriation.

24. Based upon the review of recharge to, and withdrawal from, the water sources and the observation well data, Mr. Mathiowetz concluded there is water available for appropriation.

25. The closest water right to the proposed points of diversion is held by the applicants. The next closest water right is located approximately 4.6 miles from the proposed points of diversion for Water Permit Application No. 2833-2 and 3.9 miles from Water Permit Application No. 2834-2. The closest domestic well on record is located approximately 1.8 miles east of Water Permit Application No. 2833-2 and 0.5 miles to the south of Water Permit Application No. 2834-2.

26. Mr. Mathiowetz concluded that there is a reasonable probability that these applications could be developed without causing unlawful impairment to existing water rights and domestic water uses.

27. Mr. Mathiowetz based this conclusion upon the relatively limited natural variance in the aquifer as shown in the hydrographs of the observation wells – especially those in close proximity to multiple permits; the unconfined nature of the aquifer which limits the effects of drawdown; the lack of history of substantiated claims of well interference; and the distance between the proposed points of diversion and existing rights. Additionally, Mr. Mathiowetz testified that the applicants will most likely pump their own wells dry before the effects of pumping are felt by existing rights not held by the applicants.

28. The Board finds Mr. Mathiowetz to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Mr. Mathiowetz's testimony and the reports and exhibits upon which he prepared and/or relied.

29. The Board also received the testimony of Blake Burnham. Blake testified that he and his father, Brian, were seeking the appropriations for irrigation. Mr. Burnham testified that they operate a small feedlot and most of the crops raised are used in support of their feedlot. He testified that it is his hope that he won't need to drill the full number of wells requested. Additionally, Mr. Burnham testified that Water Permit Application No. 2833-2 and Water Right No. 1260-2 will be used alternately.

30. Mr. Kevin Herrmann testified that he owns land nearby. He is very concerned about the number of wells and the amount of water being requested. He is concerned about the future availability of water and protecting his land.

31. Mr. Nathan T. Hunke also testified before the Board. Mr. Hunke is a hydrogeologist and principal in charge with Prairie Consulting Group, Inc. Mr. Hunke was retained to examine what kind of an impact pumping would have on the aquifer based upon the diversion rates requested by the applications. The Board recognized Mr. Hunke as an expert witness.

32. Mr. Hunke agreed with the analysis that the Quaternary Terrace and Quaternary Eolian aquifers were functioning as an extension of the Ogallala aquifer in this location.

33. Mr. Hunke testified that his analysis was based upon a groundwater model he created. In the model, he assumed both permit application rates as pumping wells at 835 gallons per minute per permit. The model also used locations of private wells provided to Mr. Hunke by Mr. Hermann. Several of these wells are not on record with DANR and Mr. Hunke did not have lithologic logs or gps coordinates for these private wells. Based upon the model results, Mr. Hunke initially testified the closest private well (Private Well 1) would see a drawdown of up to 66 feet, drawdown of 33 to 39 feet in the next closest well (Private Well 2), and 0-16 feet drawdown in Private Well 3. Upon cross-examination, Mr. Hunke stated that the correct estimated drawdown was 33-49 feet at the closest well (Private

Well 1), 16-33 feet at the next closest well (Private Well 2), and 0-16 feet at the Private Well 3.

34. Based upon his analysis, Mr. Hunke recommended a decrease of the rate of diversion but could not provide a rate of diversion that would be acceptable. Mr. Hunke also recommended placement of observation wells to the north of the proposed points of diversion to assist in monitoring groundwater levels.

35. The Board finds Mr. Hunke's groundwater model analysis to be unreliable. The model assumed diversions which are not reflective of the application or current activity in the aquifer. The model also assumed the locations and depths of private wells and water sources in which they are completed and further assumed that all were in use and that all withdraw the maximum limit allowable for domestic use.

36. Mr. Aaron Davis also provided testimony to the Board. He is neighbors of the applicants. He is concerned about the availability of water and how long it would take to replenish his water supply should there be issues. Mr. Davis testified that he believes that there are several wells in the area that would be affected. He asked that the Board consider the needs of all the families in the area.

37. Ms. Marie Condon also provided evidence to the Board. Ms. Condon testified as to her concerns that this irrigation use would deplete the sources of water available for domestic and livestock use. She

emphasized that, under South Dakota law, domestic use takes priority over other uses.

38. The Board also received testimony from Chief Engineer Eric Gronlund. Mr. Gronlund testified regarding his recommendations. His recommendations for both permits included a qualification that the diversion must be controlled so there is not a reduction of needed water supplies in adequate domestic wells. Mr. Gronlund opined that the applicants own domestic wells, because of their proximity, would be impacted before any other existing water rights or domestic uses would feel the impact of the pumping of these applications.

39. Mr. Gronlund suggested an additional qualification clarifying that Water Permit Application No. 2833-2 and Water Right No. 1260-2 would not be used simultaneously. Mr. Gronlund also discussed the potential of adding a qualification for an additional observation well.

40. The Board finds Chief Engineer Gronlund to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Chief Engineer Gronlund's testimony.

41. The Board finds that there is unappropriated water available to satisfy each of these applications.

42. The Board finds that granting these applications would not unlawfully impair existing water rights or domestic water uses.

43. The Board further finds that the proposed use of the water for irrigation constitutes a beneficial use.

44. The Board further finds that placing the water to this beneficial use is in the public interest.

45. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based on the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The applications fall within the Board's responsibility over water appropriation and regulation in Title 46.

2. Publication was properly made, and the Notices of Hearing were properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended granting these applications. The recommendations are not, however, binding on the Board. SDCL § 46-2A-4(8).

4. The applicants are required to satisfy each of the factors set forth in SDCL § 46-2A-9.

5. The Board concludes that the applicants have satisfied each of the factors set forth in SDCL § 46-2A-9.

6. South Dakota Codified Law section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public

interest.” Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

7. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL § 46-6-3.1 pertaining to recharge/withdrawal: whether “according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.”

8. The Board concludes there is a reasonable probability that there is unappropriated water available to fulfill the amount requested by each of the respective applications.

9. The Board further concludes that it is not probable that withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL § 46-6-3.1 if these applications are granted.

10. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversions can be developed without unlawful impairment of existing water rights or domestic water uses.

11. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best

utilization of water supplies under SDCL § 46-1-6(3). The proposed use (irrigation) is a beneficial use.

12. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be "consistent with the interests of the public of this state in the best utilization of water supplies." SDCL § 6-1-6(3). The Board concludes that appropriating water for irrigation is in the public interest.

13. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 2833-2 is granted with the following qualifications:

1. The wells approved under Water Permit Application No. 2833-2 are located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The wells authorized by Permit No. 2833-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with the Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

4. Water Permit No. 2833-2 and Water Right No. 1260-2 may not be exercised simultaneously, and the maximum combined diversion rate authorized by Permit No. 2833-2 and Water Right No. 1260-2 may not exceed 1.85 cubic feet of water per second.

Additionally, the Board enters its determination that Water Permit Application No. 2834-2 is granted with the following qualifications:

1. The wells approved under Water Permit Application No. 2834-2 are located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The wells authorized by Permit No. 2834-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with the Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this _ _ day of _____ 2022.

BY THE BOARD:

South Dakota Water Management Board

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2833-2, Brian	)	CERTIFICATE OF SERVICE
Burnham,	)	
and	)	
IN THE MATTER OF WATER PERMIT	)	
APPLICATION NO. 2834-2, Blake	)	
Burnham	)	

The undersigned hereby certifies that a true and correct copy of the Water Rights Program's proposed Findings of Fact, Conclusions of Law, and Final Decision in the above matter was served by U.S. mail, first class, postage prepaid, upon the following on this 30th day of August 2022:

Ryan S. Vogel, Attorney
Counsel for Brian and Blake Burnham
Richardson Law Firm
P.O. Box 1030
Aberdeen, SD 57402-1030

Susan Davis
31263 302nd St.
Millboro, SD 57580

Aaron Davis
30113 313th Ave.
Winner, SD 57580

Alex Davis
30113 313th Ave.
Winner, SD 57580

Amy Davis
30113 313th Ave.
Winner, SD 57580

Marie Condon
31143 299th St.
Millboro, SD 57580-6114

KayCec Kollmar-Condon
31143 299th St.
Millboro, SD 57580-6114

Kevin Herrmann
13565 Larimore Ave.
Omaha, NE 68164

Austin Davis
203 N Cottonwood St.
Norfolk, NE 68701

Jody Soles
29861 310th Ave.
Millboro, SD 57580

Charles Davis
31263 302nd St.
Millboro, SD 57580

And on the same date, a copy was hand-delivered to:

David M. McVey
Assistant Attorney General
1302 East Highway 14, Ste. 1
Pierre, SD 57501

And on the same date, the original was filed with:

Ron Duvall
DANR Water Rights Program
Joe Foss Building
523 East Capitol Avenue
Pierre, SD 57501



Ann F. Mines Bailey
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
Telephone: (605) 773-3215
E-Mail: Ann.MinesBailey@state.sd.us
*Counsel for Chief Engineer and
Water Rights Program*

pld_afm (cmb)



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

October 6, 2022

NOTICE OF ENTRY OF ORDER

TO: Brian Burnham Blake Burnham Ryan S. Vogel, Attorney
 31166 300th St 31166 300th St Richardson Law Firm
 Winner SD 57580 Winner SD 57580 PO Box 1030
 Aberdeen SD 57402-1030

Petitioners
(see attached list dated July 8, 2022)

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

FROM: Eric Gronlund, Chief Engineer *Eric Gronlund*
 SD DANR, Water Rights Program

SUBJECT: Notice of Entry of Findings of Fact, Conclusions of Law and Final Decision in the matter
 of Water Permit Application No. 2833-2, Brian Burnham and No. 2834-2, Blake
 Burnham

Notice is hereby given that on the 5th day of October 2022, the South Dakota Water Management Board entered its Findings of Fact, Conclusions of Law, and Final Decision in the above-entitled matter. Enclosed is the signed Findings of Fact, Conclusions of Law and Final Decision adopted by the Board.

South Dakota statutes provide that decisions of the Board may be appealed to the Courts. Notice of appeal of the Board's decision must be filed within thirty days of this notice and be in accordance with procedures established in SDCL 1-26-31.

Enclosure

Petitioner List
Water Permit Application No. 2833-2 and 2834-2
July 8, 2022

PETITIONERS

Susan Davis
31263 302nd St
Millboro SD 57580

Aaron Davis
30113 313th Ave
Winner SD 57580

Alex Davis
30113 313th Ave
Winner SD 57580

Amy Davis
30113 313th Ave
Winner SD 57580

Charles Davis
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Kevin Herrmann
13565 Larimore Ave
Omaha NE 68164

Austin Davis
203 N Cottonwood St
Norfolk NE 68701

Jody Soles
29861 310th Ave
Millboro SD 57580

CERTIFICATION

The undersigned hereby certifies under the penalty of perjury that a true and correct copy of a Notice of Entry of Order dated October 6, 2022, and a signed copy of the Findings of Fact, Conclusions of Law and Final Decision in the matter of Water Permit Application No. 2833-2, Brian Burnham and No. 2834-2, Blake Burnham, dated October 5, 2022, was served upon the following by enclosing the same in envelopes with first class postage prepaid and affixed thereto, and depositing said envelopes in the United States mail on October 6, 2022.

Brian Burnham
31166 300th St
Winner SD 57580

Blake Burnham
31166 300th St
Winner SD 57580

Ryan S. Vogel, Attorney
Richardson Law Firm
PO Box 1030
Aberdeen SD 57402-1030

And Petitioners as follows:

Susan Davis
31263 302nd St
Millboro SD 57580

Alex Davis
30113 313th Ave
Winner SD 57580

Marie Condon
31143 299th St
Millboro SD 57580-
6114

Kevin Herrmann
13565 Larimore Ave
Omaha NE 68164

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KayCee Kollmar-
Condon
31143 299th St
Millboro SD 57580-
6114

Charles Davis
31263 302nd St
Millboro SD 57580

Austin Davis
203 N Cottonwood St
Norfolk NE 68701

Jody Soles
29861 310th Ave
Millboro SD 57580

Above also Sent Inter-office to:

Ann Mines Bailey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

David McVey, Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre SD 57501-8501

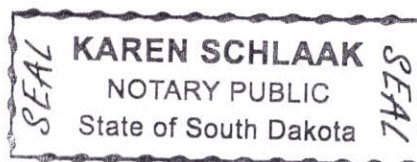

Vickie Maberry

Water Rights Program, DANR

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

Sworn to, before me, this 6th day of October, 2022.


Karen Schlaak
Notary Public
My Commission expires April 1, 2025



STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

WATER MANAGEMENT BOARD

IN THE MATTER OF WATER	)	
APPLICATION NO. 2833-2, Brian	)	
Burnham,	)	
and	)	
IN THE MATTER OF WATER PERMIT	)	WATER RIGHTS PROGRAM'S
APPLICATION NO. 2834-2, Blake	)	PROPOSED FINDINGS OF FACT,
Burnham	)	CONCLUSIONS OF LAW, AND
		FINAL DECISION

This matter came before the South Dakota Water Management Board for hearing on July 7, 2022. Board members James Hutmacher, Rodney Freeman, Peggy Dixon, Leo Holzbauer, Chad Comes, and Bill Larson were present at the hearing and heard the evidence presented. Applicants Brian Burnham and Blake Burnham appeared represented by Ryan Vogcl. Petitioners Kevin Herrmann, Aaron Davis, and Marie Condon appeared *pro se*. Ann F. Mines Bailey represented the DANR Water Rights Program and the Chief Engineer.

The Board, having considered the testimony and exhibits presented and all records and documents on file and having entered its oral decision and rulings on the parties' submissions, now enters the following:

FINDINGS OF FACT

1. On December 28, 2021, Water Rights received Water Permit Application No. 2833-2 on behalf of Brian Burnham seeking an appropriation of water for irrigation near Winner, South Dakota. Subsequent changes and supplemental information were received on March 4 and March 16, 2022.

The application in its final form proposes the diversion of 1.85 cubic feet of water per second (cfs) from two existing wells and seven proposed wells completed into the Quaternary Eolian aquifer functioning as an extension of the Ogallala aquifer in this location and located in the SE¼ Sec. 16-T95N-R77W in Tripp County. The application proposes to irrigate 130 acres also in the SE¼ Sec. 16-T95N-R77W.

2. On December 28, 2021, Water Rights also received Water Permit Application No. 2834-2 on behalf of Blake Burnham seeking an appropriation of 1.85 cfs for irrigation from four proposed wells to be completed into the Quaternary Terrace aquifer functioning as an extension of the Ogallala aquifer in this location in the W½SE¼ Sec. 11-T95N-R77W in Tripp County. The application proposes to irrigate 130 acres in the SE¼ Sec. 11-T95N-R77W.

3. The Chief Engineer, Eric Gronlund, recommended approval of these applications subject to qualifications.

4. Notices of Water Permit Application No. 2833-2 were timely advertised on March 23, 2022, in the Winner Advocate (Tripp County) and the Plainsman (Beadle County) and posted on the DANR website.

5. Notices of Water Permit Application No. 2834-2 were timely advertised on March 16, 2022, in the Winner Advocate (Tripp County) and the Plainsman (Beadle County) and posted on the DANR website.

6. DANR received the following timely petitions in opposition to Water Permit Application No. 2833-2, Brian Burnham: Susan Davis, Alex

Davis, Aaron Davis, Amy Davis, Kevin Herrmann, Marie Condon, and KayCee Kollmar-Condon.

7. DANR received the following timely petitions in opposition to Water Permit Application No. 2834-2, Blake Burnham: Charles Davis, Susan Davis, Alex Davis, Aaron Davis, Amy Davis, Kevin Herrmann, Marie Condon, and KayCee Kollmar-Condon

8. The matter was initially scheduled to be heard by the Water Management Board during its May 4, 2022 meeting; however, an automatic delay was requested, and the hearing was rescheduled for the next regular Board meeting in July.

9. Water Permit Applications Nos. 2833-2 and 2834-2 are new water permit applications which require a determination pursuant to SDCL § 46-2A-9 whether there is a reasonable probability that unappropriated water is available for the proposed use, whether the proposed use would impair existing rights, whether the use would be a beneficial use, and whether the proposed use is in the public interest.

10. In considering water availability this Board must examine whether the average quantity of the water withdrawn annually from the groundwater source would exceed the quantity of the average estimated annual recharge of water to the groundwater source if this permit was granted.

11. DANR witness, Adam Mathiowetz, a natural resources engineer with over ten years of experience, reviewed the permit application and

analyzed the hydrology of the Quaternary Eolian aquifer, Quaternary Terrace aquifer, and Ogallala aquifer. Mr. Mathiowetz additionally reviewed the information obtained from nearby observation wells, as well as current water right/permit files and well completion reports for the aquifers.

12. The High Plains aquifer includes several different formations including Arikaree, Ogallala, and quaternary deposits including alluvium and terrace and eolian deposits.

13. For management purposes, Water Rights treats the Arikaree aquifer and the Ogallala aquifer as separate units.

14. The Quaternary Eolian aquifer consists of a group of wind-blown and deposited sediments that range from silt to medium-grain sand deposited as sheets, barchan, linear, and dome-like dunes or as a veneer on uplands. This deposit has an approximate areal extent of 610 acres and groundwater flow is toward Keya Paha River.

15. The Quaternary Terrace aquifer consists of a group of deposits of clay to boulder-sized clasts deposited as pediments, paleochannels, and terrace fills of former flood plains. The areal extent of this deposit is approximately 835 acres and groundwater flows toward the Keya Paha River.

16. The Ogallala aquifer in this location exists in unconfined conditions and is comprised of sand, silt, silty clay, sandstone, siltstone, and surficial gravel deposits. The areal extent of the main body of the Ogallala aquifer is approximately one million acres. Water movement within the Ogallala aquifer is toward the Keya Paha River.

17. Earlier studies indicate the presence of the High Plains aquifer in the location of the proposed points of diversion and that water movement is from southwest toward the northeast and the Keya Paha River. Further review of lithologic logs and geologic information of the area and conversations with the well driller who worked at the site in this matter, indicate that Ogallala aquifer materials are not present and that the Arikaree aquifer is not functioning as an aquifer at this location. Based upon the review of all this information, Mr. Mathiowetz concluded that the Quaternary Eolian and Quaternary Terrace aquifers in this location are functioning as an extension of the Ogallala aquifer.

18. Mr. Mathiowetz testified recharge to the Ogallala aquifer occurs mainly through infiltration of precipitation.

19. Several studies have been done regarding the rate of recharge to the Ogallala aquifer. While none of the studies are specific to the Quaternary Eolian and Quaternary Terrace deposits functioning as extensions of the Ogallala aquifer, several of the studies include both of these deposits as part of the areal extent of the Ogallala aquifer.

20. Using the recharge rates from those studies, which ranged from 1.3 inches per year to 3.4 inches per year, Mr. Mathiowetz calculated that recharge to the main body of the Ogallala aquifer ranges from 108,914 acre-feet per year to 284,852 acre-feet per year.

21. Mr. Mathiowetz further testified regarding withdrawals from the Ogallala aquifer. He testified that there are 171 water right permits and four

future use permits completed into the Ogallala aquifer with an estimated withdrawal of 31,128.3 acre-feet per year.

22. There are sixty-nine observation wells completed into the main body of the Ogallala aquifer. Six of the observation wells are located within five miles of the proposed points of diversion with the nearest observation well located within 1 mile south of the points of diversion proposed by Water Permit Applications No. 2833-2 and 2.5 miles from the points of diversion proposed by Water Permit Application No. 2834-2.

23. The data from the observation wells demonstrate a stable to slightly rising water level over the periods of record with an exception in Bennett County, which is considered an outlier. The natural conditions dominate changes in water level and, therefore, there is recharge and natural discharge available for appropriation.

24. Based upon the review of recharge to, and withdrawal from, the water sources and the observation well data, Mr. Mathiowetz concluded there is water available for appropriation.

25. The closest water right to the proposed points of diversion is held by the applicants. The next closest water right is located approximately 4.6 miles from the proposed points of diversion for Water Permit Application No. 2833-2 and 3.9 miles from Water Permit Application No. 2834-2. The closest domestic well on record is located approximately 1.8 miles east of Water Permit Application No. 2833-2 and 0.5 miles to the south of Water Permit Application No. 2834-2.

26. Mr. Mathiowetz concluded that there is a reasonable probability that these applications could be developed without causing unlawful impairment to existing water rights and domestic water uses.

27. Mr. Mathiowetz based this conclusion upon the relatively limited natural variance in the aquifer as shown in the hydrographs of the observation wells – especially those in close proximity to multiple permits; the unconfined nature of the aquifer which limits the effects of drawdown; the lack of history of substantiated claims of well interference; and the distance between the proposed points of diversion and existing rights. Additionally, Mr. Mathiowetz testified that the applicants will most likely pump their own wells dry before the effects of pumping are felt by existing rights not held by the applicants.

28. The Board finds Mr. Mathiowetz to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Mr. Mathiowetz's testimony and the reports and exhibits upon which he prepared and/or relied.

29. The Board also received the testimony of Blake Burnham. Blake testified that he and his father, Brian, were seeking the appropriations for irrigation. Mr. Burnham testified that they operate a small feedlot and most of the crops raised are used in support of their feedlot. He testified that it is his hope that he won't need to drill the full number of wells requested. Additionally, Mr. Burnham testified that Water Permit Application No. 2833-2 and Water Right No. 1260-2 will be used alternately.

30. Mr. Kevin Herrmann testified that he owns land nearby. He is very concerned about the number of wells and the amount of water being requested. He is concerned about the future availability of water and protecting his land.

31. Mr. Nathan T. Hunke also testified before the Board. Mr. Hunke is a hydrogeologist and principal in charge with Prairie Consulting Group, Inc. Mr. Hunke was retained to examine what kind of an impact pumping would have on the aquifer based upon the diversion rates requested by the applications. The Board recognized Mr. Hunke as an expert witness.

32. Mr. Hunke agreed with the analysis that the Quaternary Terrace and Quaternary Eolian aquifers were functioning as an extension of the Ogallala aquifer in this location.

33. Mr. Hunke testified that his analysis was based upon a groundwater model he created. In the model, he assumed both permit application rates as pumping wells at 835 gallons per minute per permit. The model also used locations of private wells provided to Mr. Hunke by Mr. Hermann. Several of these wells are not on record with DANR and Mr. Hunke did not have lithologic logs or gps coordinates for these private wells. Based upon the model results, Mr. Hunke initially testified the closest private well (Private Well 1) would see a drawdown of up to 66 feet, drawdown of 33 to 39 feet in the next closest well (Private Well 2), and 0-16 feet drawdown in Private Well 3. Upon cross-examination, Mr. Hunke stated that the correct estimated drawdown was 33-49 feet at the closest well (Private

Well 1), 16-33 feet at the next closest well (Private Well 2), and 0-16 feet at the Private Well 3.

34. Based upon his analysis, Mr. Hunke recommended a decrease of the rate of diversion but could not provide a rate of diversion that would be acceptable. Mr. Hunke also recommended placement of observation wells to the north of the proposed points of diversion to assist in monitoring groundwater levels.

35. The Board finds Mr. Hunke's groundwater model analysis to be unreliable. The model assumed diversions which are not reflective of the application or current activity in the aquifer. The model also assumed the locations and depths of private wells and water sources in which they are completed and further assumed that all were in use and that all withdraw the maximum limit allowable for domestic use.

36. Mr. Aaron Davis also provided testimony to the Board. He is neighbors of the applicants. He is concerned about the availability of water and how long it would take to replenish his water supply should there be issues. Mr. Davis testified that he believes that there are several wells in the area that would be affected. He asked that the Board consider the needs of all the families in the area.

37. Ms. Marie Condon also provided evidence to the Board. Ms. Condon testified as to her concerns that this irrigation use would deplete the sources of water available for domestic and livestock use. She

emphasized that, under South Dakota law, domestic use takes priority over other uses.

38. The Board also received testimony from Chief Engineer Eric Gronlund. Mr. Gronlund testified regarding his recommendations. His recommendations for both permits included a qualification that the diversion must be controlled so there is not a reduction of needed water supplies in adequate domestic wells. Mr. Gronlund opined that the applicants own domestic wells, because of their proximity, would be impacted before any other existing water rights or domestic uses would feel the impact of the pumping of these applications.

39. Mr. Gronlund suggested an additional qualification clarifying that Water Permit Application No. 2833-2 and Water Right No. 1260-2 would not be used simultaneously. Mr. Gronlund also discussed the potential of adding a qualification for an additional observation well.

40. The Board finds Chief Engineer Gronlund to be a credible expert witness and that these Findings of Fact are supported by the evidence presented including Chief Engineer Gronlund's testimony.

41. The Board finds that there is unappropriated water available to satisfy each of these applications.

42. The Board finds that granting these applications would not unlawfully impair existing water rights or domestic water uses.

43. The Board further finds that the proposed use of the water for irrigation constitutes a beneficial use.

44. The Board further finds that placing the water to this beneficial use is in the public interest.

45. Any finding of fact more properly designated as a conclusion of law shall be treated as such.

Based on the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter. The applications fall within the Board's responsibility over water appropriation and regulation in Title 46.

2. Publication was properly made, and the Notices of Hearing were properly issued pursuant to SDCL § 46-2A-4.

3. The Chief Engineer recommended granting these applications. The recommendations are not, however, binding on the Board. SDCL § 46-2A-4(8).

4. The applicants are required to satisfy each of the factors set forth in SDCL § 46-2A-9.

5. The Board concludes that the applicants have satisfied each of the factors set forth in SDCL § 46-2A-9.

6. South Dakota Codified Law section 46-2A-9 provides that a permit to appropriate water may be issued "only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights and that the proposed use is a beneficial use and in the public

interest.” Each of these factors must be met and the permit must be denied if the applicant does not meet its burden of proof on any one of them.

7. The first factor for consideration under SDCL § 46-2A-9 is whether there is water available for the appropriation. Determination of water availability includes consideration of the criteria in SDCL § 46-6-3.1 pertaining to recharge/withdrawal: whether “according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source.”

8. The Board concludes there is a reasonable probability that there is unappropriated water available to fulfill the amount requested by each of the respective applications.

9. The Board further concludes that it is not probable that withdrawals from the aquifer would exceed recharge to the aquifer in violation of SDCL § 46-6-3.1 if these applications are granted.

10. The second requirement of SDCL § 46-2A-9 is that the proposed water use may not unlawfully impair existing water rights. The proposed diversions can be developed without unlawful impairment of existing water rights or domestic water uses.

11. The third element in SDCL § 46-2A-9 is whether the use of water would be a beneficial use: one that is reasonable and useful and beneficial to the appropriator and also consistent with the interest of the public in the best

utilization of water supplies under SDCL § 46-1-6(3). The proposed use (irrigation) is a beneficial use.

12. The fourth requirement of SDCL § 46-2A-9 concerns the public interest. The proposed use of the water must be “consistent with the interests of the public of this state in the best utilization of water supplies.” SDCL § 6-1-6(3). The Board concludes that appropriating water for irrigation is in the public interest.

13. Any conclusion of law more properly designated as a finding of fact shall be treated as such.

FINAL DECISION

Water Rights filed Proposed Findings of Fact and Conclusions of Law and Final Decision and the Petitioner in Opposition filed objections and proposed alternate findings of fact. In compliance with SDCL § 1-26-25, the Proposed Findings of Fact and Conclusions of Law are accepted, modified, or rejected as follows:

Water Rights proposed Findings of Fact

Water Rights proposed Findings of Fact and Conclusions of Law are accepted in their entirety.

Petitioner in Opposition's alternative proposed Findings of Fact

The Board did not vote on a proposed qualification for an additional observation well and as such, the alternate proposed fact to include such a qualification in Finding of Fact number 39 is rejected. Intervenor also submitted objections and proposed alternate Findings of Fact and Conclusions

of Law prepared and submitted by Nathan Hunke of Prairie Consulting Group, Inc. Mr. Hunke is not a party to the contested case and therefore lacks standing to submit alternate Findings of Fact and Conclusions of Law. The Hunke proposals are therefore rejected in their entirety.

Based on the foregoing Findings of Fact and Conclusions of Law, the Board enters its determination that Water Permit Application No. 2833-2 is granted with the following qualifications:

1. The wells approved under Water Permit Application No. 2833-2 are located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The wells authorized by Permit No. 2833-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with the Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

4. Water Permit No. 2833-2 and Water Right No. 1260-2 may not be exercised simultaneously, and the maximum combined diversion rate authorized by Permit No. 2833-2 and Water Right No. 1260-2 may not exceed 1.85 cubic feet of water per second.

Additionally, the Board enters its determination that Water Permit Application No. 2834-2 is granted with the following qualifications:

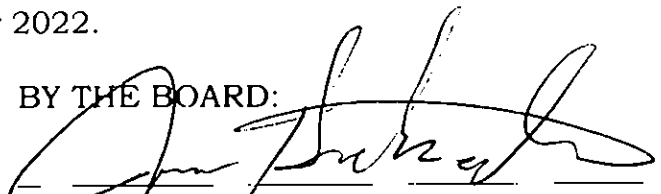
1. The wells approved under Water Permit Application No. 2834-2 are located near domestic wells and other wells which may obtain water from the same aquifer. Water withdrawals shall be controlled so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

2. The wells authorized by Permit No. 2834-2 shall be constructed by a licensed well driller and construction of the well and installation of the pump shall comply with the Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

3. This Permit is approved subject to the irrigation water use questionnaire being submitted each year.

Dated this 5th day of October 2022.

BY THE BOARD:



South Dakota Water Management Board

October 6, 2022

PAYMENT REQUEST FORM

PAYEE: Burnham Inc.
31166 300th St
Winner SD 57580

FROM: DANR Water Rights Program
523 E. Capitol Ave
Pierre, SD 57501-3181

DESCRIPTION OF SERVICE, PRODUCE OR TRANSFER

Refund-Over payment of Application/License Fee

AMOUNT: \$200.00

FUNDING SOURCE: WR Fees

GENERAL:

FEDERAL:

OTHER:

COMMENTS:

AUTHORIZATION:

Eric Threlkeld

OCT 07 2022

I declare and affirm under the penalties of perjury that this claim is in all things, true and correct. I further agree to comply with the provisions of the Civil Rights Act of 1964 and regulations issued thereunder relating to nondiscrimination in federal assisted programs.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

OCT 07 2022

Brian & Blake Burnham
31166 300th St
Winner SD 57580

Dear Sirs:

Enclosed are Water Permit Nos. 2833-2 and 2834-2 authorizing construction of the water diversion systems and beneficial use of the water, not exceeding the limits as specified in the Water Permits.

Regarding Permit No. 2833-2, an application filing fee of \$1,250.00 was submitted. The correct fee for this permit is \$1,050.00. \$200.00 will be refunded to Burnham Inc. The refund check should be received within the next couple of weeks.

Form 10, *Notice of Completion of Works and Application of Water to Beneficial Use*, are enclosed. Please return the completed form after you have finished the system and have put the water to beneficial use. An investigation can then be scheduled so the water license may be issued, thus completing the acquisition of a water right.

An informational sheet *Common Water Right Questions?* is also enclosed. This sheet is intended to answer some of the questions associated with obtaining and keeping a water right.

Sincerely,

Eric Gronlund, Chief Engineer
Water Rights Program
(605) 773-3352

enclosures

NOTE: Please be aware that an appeal of the Board's decision to circuit court may occur as indicated in the Notice of Entry of Order dated October 6, 2022, concerning adoption of the Findings of Fact, Conclusions of Law and Final Decision.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

**Affidavit of Public Notice
on DANR Website**

Pursuant to SDCL § 46-2A-4, public notice of the following application was posted on the DANR web site at <https://danr.sd.gov/public>. The posted public notice is the same notice as published in the pertinent newspaper(s) and a copy of the public notice is maintained in the application file. If the application is contested, the posting is moved to the DANR contested case website at <https://danr.sd.gov/public/ContestedCase.aspx> until final action is taken on the application pursuant to SDCL § 46-2A-4.

Application No.: 2833-2

Name of Applicant: Brian Burnham

Date of Posting: 3/22/2022

Date of Removal: 8/1/2022



Ron Duvall, Water Rights Permitting Administrator

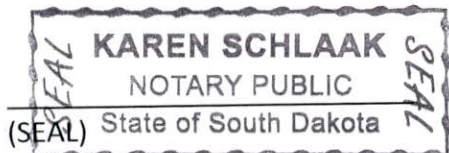
10/11/22

Date

Subscribed and sworn to before me, a notary public, this 11th day of October, 2022.



Notary Public - South Dakota
My commission expires: 4/1/25





**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

May 2, 2024

Blake & Brian Burnham
31166 300th St
Winner SD 57580

1260-2
2833-2
2834-2
2835-2

Dear Mr. Burnham:

I am writing you today in regard to your water permits/rights, Water Right No. 1260-2 and Permit Nos. 2833-2, 2834-2, and 2835-2 authorizing the irrigation of 131 acres, 130 acres, 130 acres, and 145 acres, respectively, for a combined total of 536 acres.

In reviewing the irrigation questionnaires submitted for the 2023 irrigation season, it was discovered that you had reported irrigation of 685 acres. I have enclosed copies of each questionnaire for you to review.

If this was simply a recording error, we can make that adjustment. However, if you have developed 149 acres more than what is authorized, a new permit application would be required.

For your convenience I have enclosed a new irrigation permit application. I've also enclosed a "Notice of Completion of Works" form for you to review and return if the systems have been fully developed.

Please feel free to call me with any questions regarding the permit application, permitting process, or questions regarding the questionnaires.

Sincerely,

Amanda Dewell
Water Rights Program
605 773-3352
Amanda.Dewell@state.sd.us

enclosures

File No. 1260-2
2833-2
2834-2
2835-2

WATER RIGHTS PROGRAM -- FILE DOCUMENTATION

NAME & ADDRESS: Blake & Brian Burnham, 31166 300th St, Winner SD 57580

DATE: 05/10/2024

RE: Reported irrigation of more acres than authorized

COMMENTS:

On May 2, 2024, I sent Burnhams a letter regarding their 2023 irrigation questionnaires. They had indicated the irrigation of 149 more acres than what they were permitted.

On May 8, 2024, Burnhams responded to my letter indicating that they had misread/recorded the number of irrigated acres. They requested that questionnaire reporting under 1260-2 be changed from 135 to 131 acres. 2833-3 be changed from 270 to 130 acres, and 2834-2 be changed from 135 to 130 acres.

New scans have replaced originals in the reporting database for the above mentioned permits. No adjustments were made to the 2835-2 questionnaire.



Amanda Dewell
Water Rights Program

We read the permits wrong. Sorry for the error! Attached are the corrections along with 3 Notices of Completion.
Thank you.
Brian Burnham
Blake Burnham

2833-2



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

RECEIVED

MAY 08 2024

**OFFICE OF
WATER**

**NOTICE OF COMPLETION OF WORKS AND
APPLICATION OF WATER TO BENEFICIAL USE**

TO: Water Rights Program, DANR
523 E. Capitol Ave.
Pierre, SD 57501-3182
or via email to DANRmail@state.sd.us

Date 5-6-24

FROM:

Brian Burnham
(name)

605-842-5422
(phone)

31166 300th st
(address)

brian@burnhaminc.net
(email)

Winnon SD 57580
(city, state, zip)

I have completed the construction of the water use system and I have put the water to beneficial use to the maximum extent it is going to be used.

Water Permit No. 2833-2 states that the water use system is to be constructed by

10/5/2027

(date)

, and water is to be put to beneficial use by

10/5/2031

(date)

The water use system was completed on

6-1-23

(date)

Applying the water to beneficial use was completed on

6-15-23

(date)

You may schedule an inspection so that the water license may be issued.



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E. CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

May 13, 2024

2833-2
2834-2
2835-2

Blake & Brian Burnham
31166 300th St
Winner SD 57580

To whom it may concern:

I am writing to acknowledge receipt of the "Notice of Completion of Works" forms that you sent in to let us know that you are completed with your water use systems.

The systems are now ready for inspection. Inspections are done on a county-by-county basis as staff time permits. You have done everything you need to do and the intervening time between the completion of your projects and the staff inspections have no bearing on your water permit.

Someone from our office will contact you prior to the inspections to set up a time that is convenient for you. If you have any questions, please contact me.

Sincerely,

Amanda Dewell
Water Rights Program
(605) 773-3352
email: Amanda.Dewell@state.sd.us